

Federal Election Commission

Annual Report 1988



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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

OFFICE OF THE CHAIRMAN

June 1, 1989

The President of the United States
The United States Senate
The United States House of Representatives

Dear Sirs:

We are pleased to submit for your information the 14th annual report of the Federal Election Commission, as required by the Federal Election Campaign Act of 1971, as amended. The Annual Report 1988 describes the activities performed by the Commission in carrying out its duties under the Act. The report also outlines the thirty legislative recommendations the Commission adopted and transmitted to the Congress for consideration in March 1989. We are hopeful that you will find this annual report a useful summary of the Commission's efforts to implement the Federal Election Campaign Act.

Respectfully,

A handwritten signature in cursive script that reads "Danny L. McDonald".

DANNY L. McDONALD
Chairman

Table of Contents

| | Page |
|--|-------------|
| Introduction | 1 |
| Chapter 1 | |
| Presidential Public Financing | 3 |
| Past and Future Funding | 3 |
| Primary Election | 4 |
| Convention | 7 |
| General Election | 8 |
| Chapter 2 | |
| Administration of the Law | 9 |
| Disclosure | 9 |
| Assistance to Committees and the Public | 14 |
| Review of Reports | 14 |
| Enforcement | 15 |
| Judicial Review | 16 |
| Regulations | 16 |
| Legal Issues | 17 |
| Clearinghouse on Election Administration | 25 |
| Chapter 3 | |
| The Commission | 27 |
| Commissioners | 27 |
| Personnel and Labor Relations | 27 |
| Administrative Management | 27 |
| FEC Budget | 27 |
| Chapter 4 | |
| Legislative Recommendations | 31 |
| Appendices | |
| 1. Biographies of Commissioners and Officers | 47 |
| 2. Chronology of Events, 1988 | 51 |
| 3. FEC Organization Chart | 55 |
| 4. FEC Offices | 57 |
| 5. Statistics on Commission Operations | 61 |
| 6. FEC <i>Federal Register</i> Notices, 1988 | 65 |

Introduction

Nineteen eighty-eight was unique in the Commission's history for a number of reasons. During this fourth publicly funded election, 15 candidates qualified for primary matching funds. More candidates campaigned over a longer period and spent more money than ever before. In addition, the Commission had to deal with an increasing number of complex issues. Nonetheless, drawing on 13 years of experience, the Commission administered the federal election campaign laws with ease and efficiency.

Somewhat paradoxically, while internal FEC operations ran smoothly, voices outside the agency called for change. In the press and in Congress, attention focused on several campaign finance issues including "soft money,"* PAC contributions, expenditure limits, bundling of contributions and candidate's personal funds.

At the administrative level, the Commission also explored the need for change—particularly concerning the allocation of expenditures between federal and nonfederal accounts and the definition of corporate expenditures within the context of political activity conducted by small nonprofit corporations. The Commission issued notices of rulemaking, reviewed public comments and conducted hearings on these matters.

The Commission contributed further to the reform effort when, in March 1988, it sent Congress 26 specific recommendations for amending the law. These recommendations, which were both substantive and technical in nature, were designed to enhance the agency's ability to administer election laws and to reduce the burdens on political committees. Included in these recommendations for 1988 were proposals to raise the threshold amount of matchable contributions required to qualify for Presidential primary matching funds and to abolish the state-by-state expenditure limits imposed on publicly financed Presidential candidates. Another recommendation would exclude PACs and party committees from having to file reports with state election offices.

This year, in addition to reaffirming the importance of these recommendations, the Commission asked Congress to study the need for statutory change to ensure the viability of the Presidential Election Campaign Fund. The Commission further suggested that new legislation might also be needed in the following areas: Contributions and expenditures to influence federal and nonfederal elections, nonprofit corporations, disclaimer notices and random audits. Legislative recommendations adopted in 1989 appear in Chapter 4.

* Soft money has generally been construed to mean funds that are raised and spent for state and local elections and are not therefore reportable under the federal campaign finance law or subject to the law's limits and prohibitions on contributions.

Chapter 1

Presidential Public Financing

The major elements of the public financing program have remained largely the same since the first publicly financed Presidential election in 1976. Basically, public funding encompasses:

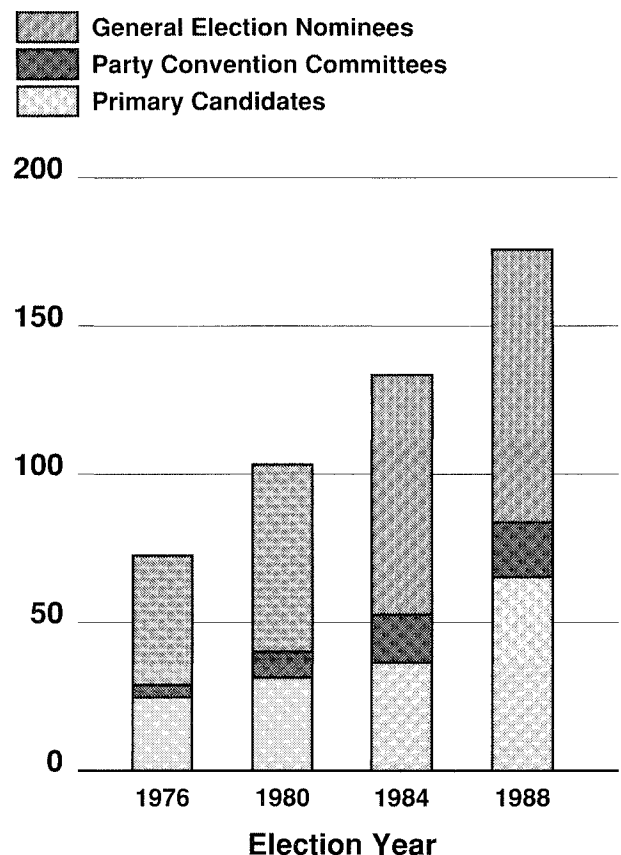
- Matching funds for Presidential primary candidates who have met qualification requirements;
- Full grants to political parties to sponsor Presidential nominating conventions; and
- Full grants for the general election campaigns of major party nominees and partial grants for qualified minor and new party nominees.

Past and Future Funding

Money for the public funding program comes from the Presidential Election Campaign Fund. This Fund consists of dollars checked off by taxpayers on their federal income tax returns. Since 1976, the first year in which Presidential elections were financed with public funds, the Commission has certified a total of \$485 million in payments to some 60 candidates and 8 Democratic and Republican nominating convention committees. Included in this total were three minor party candidates who qualified for \$5.3 million of public funds. The graph to the right compares the amount of public funds the Commission certified for each of the last four Presidential elections.

Spending in 1988 increased dramatically over 1984, raising the possibility that, by 1996, the Presidential fund will not have enough money to cover the Presidential elections. In 1988, the Commission certified an estimated total of \$175.8 million for the primaries, conventions and the general election. This left a balance of approximately \$40 million. At the current checkoff rate of 21 percent (down from a high of 28.7 percent in 1980), taxpayers designate roughly \$35 million each year for the fund. If, as projected, \$180 million are certified in 1992, the Fund will be \$70 million short of the \$240 million needed for 1996 entitlements.*

Public Funding Certification for the 1976, 1980, 1984 and 1988 Presidential Elections (in millions of dollars)



* These estimates were prepared by the Federal Election Commission for the House Administration Subcommittee on Elections.

Concerned about the possible depletion of the Presidential Fund, the Commission asked Congress in its 1990 budget request for \$250,000, to fund an education program to inform taxpayers about the public funding system. The plan calls for the Commission to work with the Advertising Council, a national organization, in developing a nation-wide in-

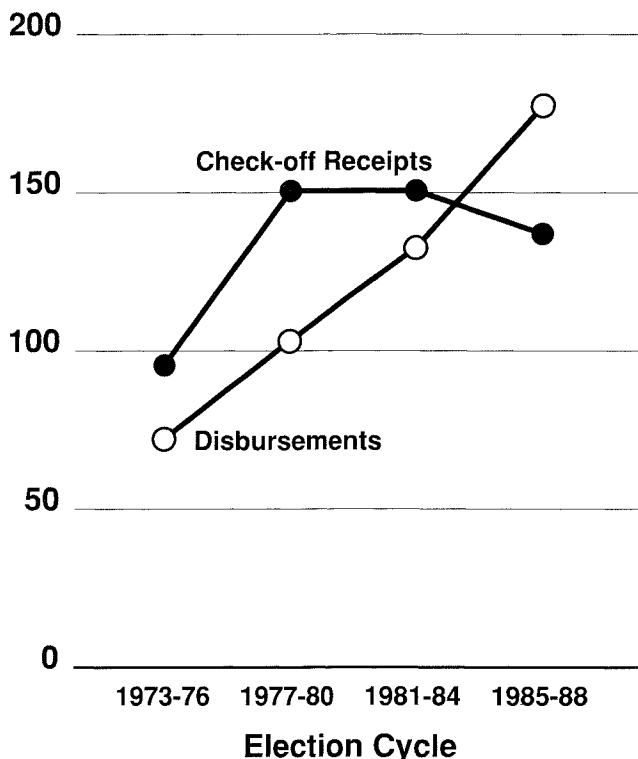
formational program. The advertising industry and media would bear much of the cost for the program as a public service.*

Primary Election

For the first time in the Commission's history, there was no incumbent President running for reelection. Consequently, both parties held very competitive primaries, which had broad implications for the Commission. Candidates began their campaigns earlier, and they spent more money than ever before. Preliminary figures indicate that approximately \$251 million was spent by 1988 Presidential primary candidates.

Presidential Election Campaign Fund Receipts and Disbursements by Election Cycle, 1973 - 1988 (in millions of dollars)

- Income Tax Check-off Receipts
- Disbursements to Candidates and Committees



Certifications and Audits

The Commission certified a total of \$65.4 million in matching fund payments to 15 primary candidates. To be eligible to receive matching funds, a candidate must first raise in excess of \$5,000 in each of 20 States (i.e., over \$100,000 in contributions). Only contributions from individuals apply toward this threshold. Although an individual may contribute up to \$1,000 to a candidate, only a maximum of \$250 counts as a matchable contribution, applicable to the \$5,000 threshold. To be eligible for matching funds, the candidate must also submit a letter in which he or she agrees to comply with the provisions of the Primary Matching Payment Account Act and Commission Regulations including the limits set on campaign spending. The maximum amount of matching funds a primary candidate could receive in 1988 was \$11.525 million dollars, half of the \$23.050 million national spending limit.

Throughout 1988, candidates continued to make matching fund submissions for Commission review. Candidates' use of computer tape for their submissions enabled the Commission to certify requests quickly. The table below lists the total amount of matching funds certified to each eligible candidate as of December 31, 1988.

* See also the Commission's 1989 legislative recommendation, p. 31.

| Candidate | Amount Certified as of December 31, 1988 |
|---------------------------------|--|
| Bruce Babbitt (D) | \$1,078,939 |
| George Bush (R) | \$8,393,099 |
| Robert J. Dole (R) | \$7,618,116 |
| Michael Dukakis (D) | \$9,040,028 |
| Pete du Pont (R) | \$2,550,954 |
| Lenora B. Fulani (New Alliance) | \$ 905,744 |
| Richard Gephardt (D) | \$2,853,387 |
| Albert Gore, Jr. (D) | \$3,853,402 |
| Alexander Haig (R) | \$ 538,539 |
| Gary Hart (D) | \$1,122,282 |
| Jesse Jackson (D) | \$7,701,169 |
| Jack Kemp (R) | \$5,812,058 |
| Lyndon H. LaRouche (D) | \$ 825,577 |
| M. G. "Pat" Robertson (R) | \$9,604,959 |
| Paul Simon (D) | \$3,603,901 |

The Commission is required to audit all public funding recipients to ensure that Federal funds are spent in compliance with the law. As of March 17, 1989, the Commission had approved one final audit report on a Presidential primary candidate and had completed interim audit reports on four others, as well as the two major parties' convention committees.

Legal Issues

Through advisory opinions, litigation and the process of certifying public matching funds, the Commission addressed several legal issues pertaining to the primary election funding.

Nonmatchable Contributions. On February 11, 1988, the Commission made a final determination that contribution checks made payable to "The Kemp Forum" could not be matched with federal funds for the Jack Kemp for President Committee. Under FEC regulations, contribution checks to a publicly funded primary candidate must be made payable to the candidate or to one of his/her authorized committees for the Presidential campaign. See 11 CFR 9034.2(c) and Guideline for Presenta-

tion in Good Order. The Commission concluded that the Kemp Committee had not provided evidence to demonstrate that "The Kemp Forum" was a function sponsored and authorized by either the candidate or his committee.

Allocation of Presidential Media Expenses. In AO 1988-6, the Commission addressed the issue of allocating media expenses to a Presidential campaign's fundraising exemption. Under 2 U.S.C. §431(9)(B)(vi), a publicly funded Presidential primary campaign may exclude from its spending limit fundraising costs amounting to 20 percent of the expenditure limit. Senator Albert Gore's 1988 Presidential primary campaign planned to air a 60-second television advertisement in Colorado seeking both political support and contributions for his campaign. Three seconds would be devoted to fundraising. The Commission concluded that the Gore campaign could exclude a reasonable portion of the broadcast costs—or up to 50 percent—from its spending limit as exempt fundraising expenditures, provided the ad was not aired within 28 days of the election (i.e., the Colorado caucus).

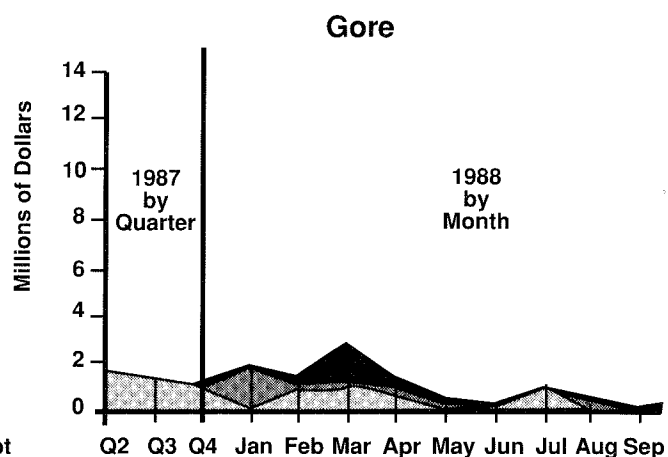
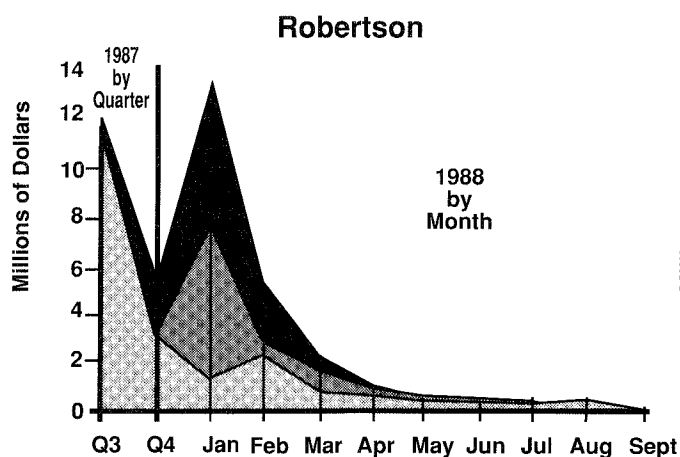
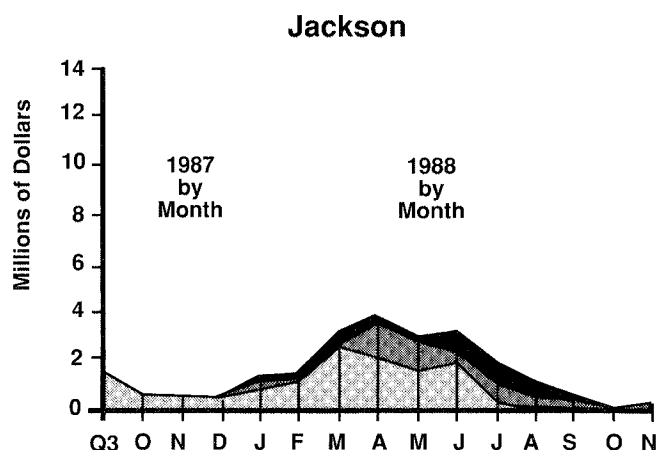
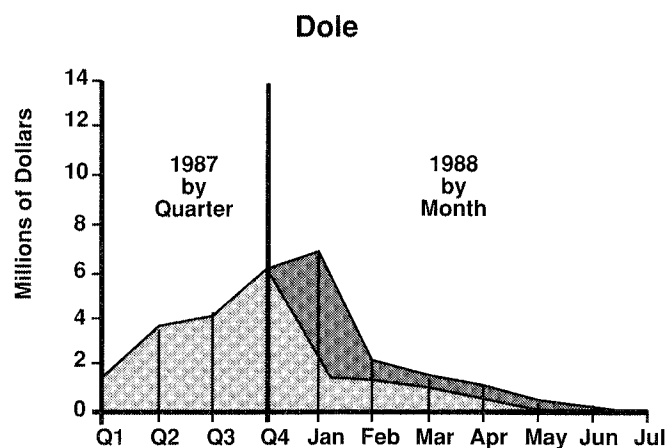
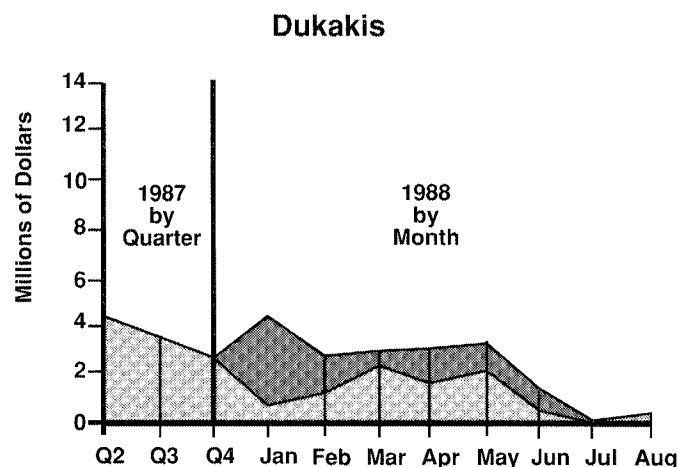
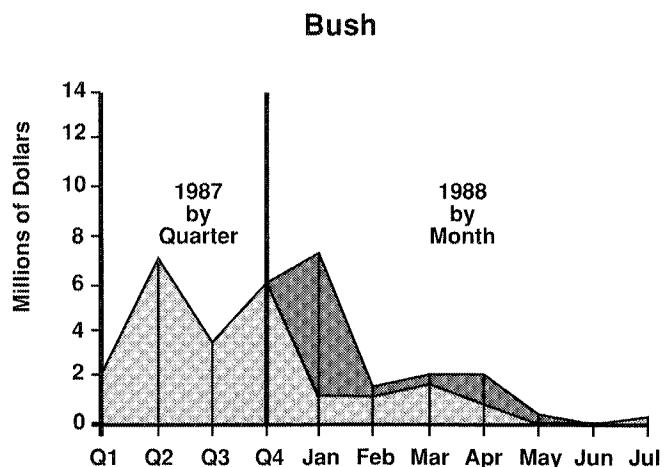
Use of Matching Funds for Old Debts. In AO 1988-5, the Commission said a Presidential candidate could not use current primary matching funds to retire debts remaining from an earlier Presidential campaign. Hart '88, Gary Hart's principal campaign committee for his 1988 Presidential primary campaign, wanted to use public matching funds received for the 1988 election to retire debts remaining from his 1984 Presidential campaign. The Commission concluded that using 1988 public funds to pay old debts would be a nonqualified campaign expense. On the other hand, Hart '88 could use its private contributions to liquidate its 1984 debts, but only after the FEC had completed the audit of the '88 campaign and after Hart '88 had made any required repayments of public funds and had paid any civil penalties.

In a related matter, two creditors from Senator Hart's 1984 campaign attempted to attach his 1988 funds. In March 1988, the U.S. District Court for the

Receipts of Presidential Primary Campaigns,* 1987–1988

Key

- Loans
- Matching Funds
- Contributions from Individuals



* Campaigns depicted are the six which continued for the longest duration. In all, 15 campaigns received primary matching funds.

District of Columbia in *Xerox Corp. v. Americans with Hart, Inc.* and *Harry Kroll v. Americans with Hart, Inc.** granted the FEC's motion to vacate writs of attachment filed by Senator Hart's creditors. Earlier in the year, the Commission authorized the general counsel to send letters advising the creditors that no federal statute authorized diversion of matching funds by the government to any other party. Further, the letter said, the Commission had determined the eligibility for matching funds, but it did not possess the funds. Actual payments were made by the U.S. Secretary of the Treasury.

Prohibited and Excessive Contributions. In a compliance case dating back to the 1984 Presidential primary elections, the Commission concluded that extensions of credit to Presidential campaigns beyond normal business practice were violations of the election law. In MUR 2175, the Commission determined, first, that a media firm had made a prohibited corporate contribution to a Presidential campaign when it extended credit to the campaign outside the ordinary course of business. Contrary to its usual policy, the firm had agreed to pay \$160,000 in advance to purchase media time for the campaign.

In addition, the Commission found that the Presidential candidate had exceeded his \$50,000 personal spending limit by charging campaign expenditures on his personal credit card in excess of this amount. Since the candidate had already contributed \$48,750 to his campaign, each time the campaign failed to pay the unpaid balance exceeding \$1,250, the candidate violated the personal expenditure limit.

Finally, the Commission found that the campaign had received excessive contributions from 49 individuals. Although the campaign had refunded these contributions or reattributed them to other contributors, it took the campaign 241 days from the date

of receipt to take these remedial measures. The Commission concluded that the late action resulted in violations of the contribution limits.

Convention

Under the law, each major political party may request public funds to finance the national convention held to nominate its Presidential candidate. The party may not spend more than the public funding grant. Minor parties become eligible for partial convention funding based on their Presidential candidate's share of the popular vote in the preceding general election.

Certifications

Since a major party is entitled to receive a public funding grant in the year preceding the convention, in July 1987, the Commission certified \$8,892,000 to the convention committees of the Democratic and Republican parties. This amount was based on the 1986 cost-of-living adjustment. In February 1988, when figures became available for the 1987 cost-of-living adjustment, the Commission certified an additional \$328,000 in federal funds to each of the committees. The additional certifications brought each major party's total grant to \$9,220,000, the maximum entitlement.

Legal Issue: Convention Delegates

When delegate committees are affiliated with a Presidential primary campaign, they are subject to the campaign's expenditure limits and to other rules contained in 11 CFR 110.14. In AO 1988-1, the Commission had to decide whether several Dukakis delegate committees were affiliated with Michael Dukakis' authorized committee. An unpaid coordinator for Mr. Dukakis' primary campaign in Florida sought nomination as a Dukakis delegate while also directing the campaign activities of several Dukakis delegate committees. The Commission concluded that the proposed delegate committees would be affiliated with the Presidential campaign. As evidence of affiliation, the Commission cited several facts:

* *Xerox Corp. v. Americans with Hart, Inc.*, No. 88-86 (D.D.C. March 10, 1988) (dismissed); *Harry Kroll v. Americans with Hart, Inc.*, No. 88-211 (D.D.C. March 10, 1988) (dismissed).

- Dukakis' coordinator planned to organize and direct the delegate committees.
- The campaign and delegate committees planned to exchange lists for phone bank and mail activities.
- The Dukakis campaign arranged for contributions to these delegate committees.
- Dukakis' staff provided the delegate committees with administrative support, including help with filing campaign finance reports.

In another opinion, AO 1988-10, the Commission stated that activities undertaken by individuals from Oregon solely to promote their election as precinct committee persons would not be regarded as part of the convention delegate selection process. The Commission took this view because, under Oregon state law, precinct committee persons did not determine the number of delegates apportioned to each Presidential candidate.

General Election

The Presidential nominee of each major party may qualify for full public financing of the general election campaign (e.g., \$46.1 million in 1988). Major party nominees who accept public financing for their general election campaigns may not spend more than this entitlement plus \$50,000 in personal funds. Private funds, subject to contribution limits, may be raised and spent solely for legal and accounting costs incurred to ensure compliance with the Act.

Certifications

The Commission approved funding for Michael Dukakis and Lloyd Bentsen, the Democratic nominees, on July 26, 1988, and for George Bush and Dan Quayle, the Republican nominees, on August 22, 1988. In their requests for public funds, the nominees agreed to abide by the overall spending limit, to use only public funds for their campaigns and to comply with other legal requirements.

Legal Issue: Dual Candidacy

Dual candidacy, where one candidate runs for two offices simultaneously, became an issue when the Commission received a petition asking the agency to deny public funding to the Democratic Presidential nominee, Governor Michael Dukakis and his running mate Senator Lloyd Bentsen for their general election campaign. The petitioners asserted that, because Senator Bentsen was also running for reelection to the Senate, his use of private contributions in his Senate campaign would inevitably result in a prohibited use of private contributions in his Vice Presidential bid. The petitioners* requested the Commission either to stay its decision to certify public funds to the Democratic Presidential ticket or to delay transmittal of the certification to the U.S. Treasury until petitioners could obtain a stay of the FEC's certification from the U.S. Court of Appeals for the District of Columbia Circuit.

On July 26, 1988, the Commission voted to deny the petition. In its Statement of Reasons, the Commission noted that "nothing in the campaign finance statutes or regulations requires Senator Bentsen to withdraw from the Senate race or prohibits him from using private contributions to further his Senatorial campaign." In fact, the Commission noted, its regulations have established rules governing dual candidacies, including those involving publicly financed Presidential campaigns. 11 CFR 110.8(d). The petitioners then filed suit with the appeals court.

On August 3, 1988, the U.S. Court of Appeals for the District of Columbia Circuit in *Boulter and National Republican Senatorial Committee v. FEC*** affirmed the FEC's decision to certify public funds for Democratic nominees Michael Dukakis and Lloyd Bentsen.

* Beau Boulter, Bentsen's Senate opponent, and the National Republican Senatorial Committee (NRSC).

** *Boulter and National Republican Senatorial Committee v. FEC*, No. 88-1541 (D.C. Cir., August 3, 1988) (per curiam).

Chapter 2

Administration of the Law

Disclosure

Central to the Commission's operations is facilitating public access to the campaign finance data disclosed by candidates and political committees. During 1988 the Commission responded to over 64,000 requests for information through its Public Records Office and Press Office.

Paper copies of reports are made available to the public within 48 hours. Summary data from the reports are coded and entered into the FEC's computer system during the first 48 hours. Detailed transactions are entered later. In 1986, however, budgetary considerations had forced the Commission to cut this computerized disclosure program along with other programs. At the time, the Commission had pledged to restore the data at the earliest possible date. In 1988 it resumed data entry for the 1987-88 election cycle and completely restored the itemized information from the 1986 campaign reports, including contributions of \$500 and over from individuals.

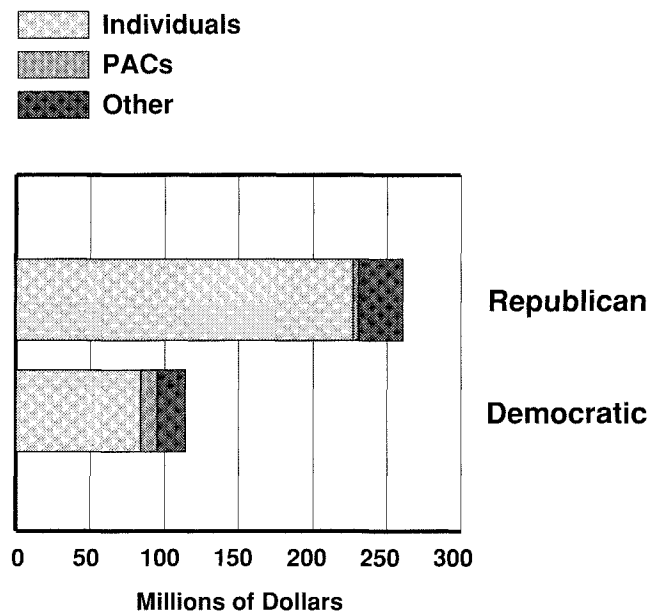
In 1988, the Commission decided to extend its efforts to capture even more information from the next election cycle (1989-90), including all contributions from individuals of \$200 and over.

The Commission also expanded its methods of making information available to the public. By the end of the year more than 100 individuals and organizations throughout the country were receiving computerized indexes and reports at their locations by means of the Direct Access Program. Fifteen state election offices were also "on-line" and were thereby able to provide information on federal campaign finance from state capitals throughout the country. Press releases summarizing activity during 1988 were expanded, providing more timely information than ever before. Also released before the election was a complete listing of campaign finance statistics for general election candidates through the pre-general reporting period.

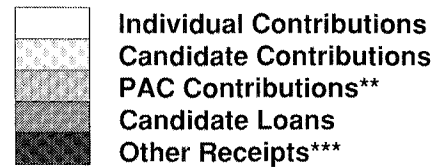
In an effort to improve academic research on campaign finance questions, the Commission provided additional computer data to the Inter-University Consortium for Political and Social Research at the University of Michigan. The Consortium provides information to researchers at universities throughout the world at no cost. The material provided included historical information on elections beginning in 1978, as well as more detailed data concerning the 1986 election cycle.

The following graphs illustrate the scope of information that can be derived from disclosure data.

**Receipts of Party Committees
1987-88**



Sources of Receipts*
All Congressional Candidates
January 1987 — December 1988



| | Incumbent | Challenger | Open Seat**** |
|-------------------|---------------------------|---------------------------|---------------------------|
| SENATE | | | |
| Democratic | \$51 million | \$28.5 million | \$27.6 million |
| Republican | \$47.2 million | \$27.2 million | \$16.7 million |
| HOUSE | | | |
| Democratic | \$101 million | \$29.8 million | \$28.5 million |
| Republican | \$71.6 million | \$21.7 million | \$20.4 million |

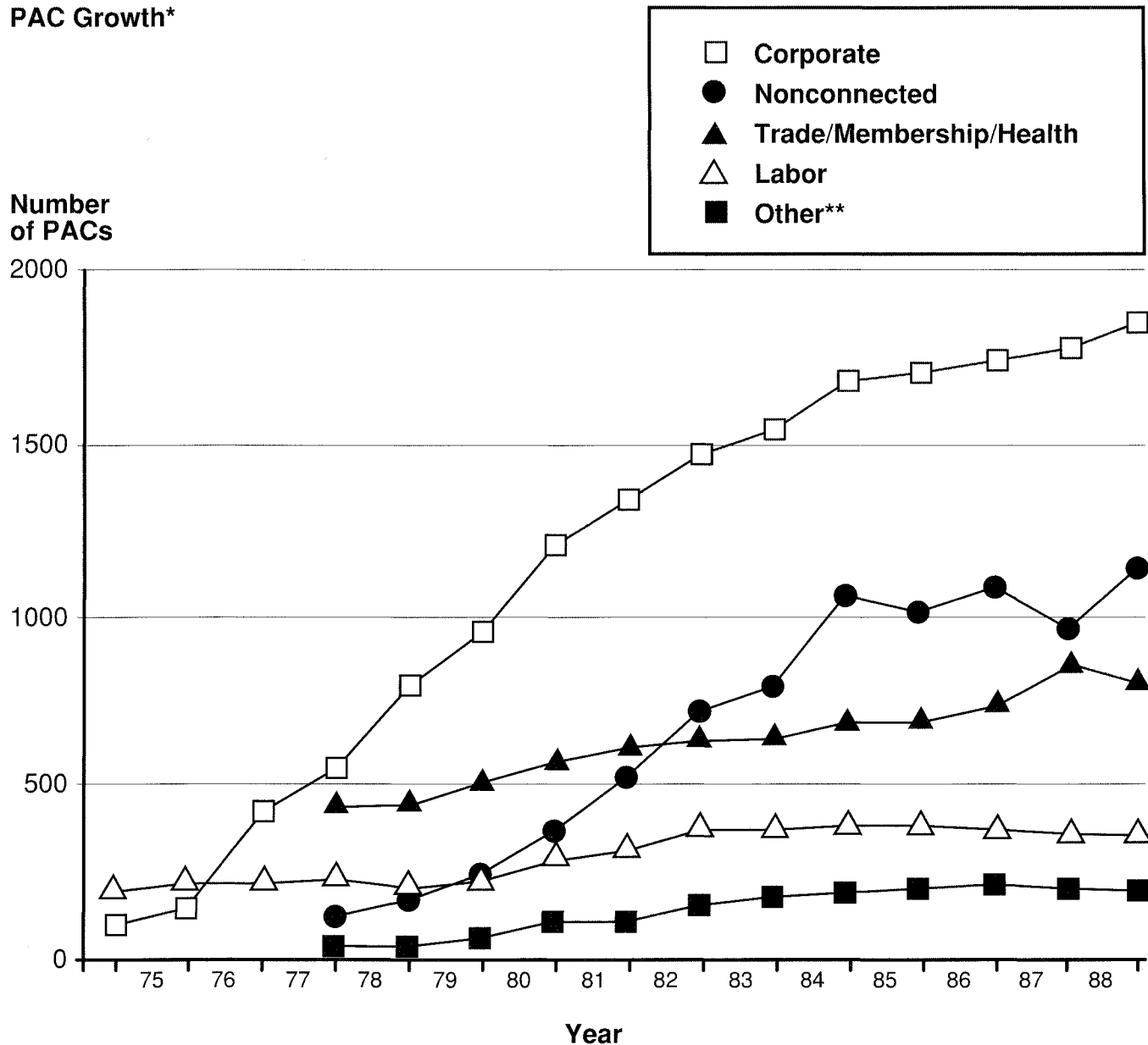
* Charts do not reflect funds received prior to 1987-88. Figures recorded March 1989.

** PAC contributions include contributions from other candidate committees and from any other political committees that are not part of national or state party organizations.

*** Other receipts include, for example, party committee contributions, interest and dividends earned on investments, and offsets to expenditures.

**** Herbert Kohl's contributions to his Wisconsin Senatorial campaign account for 98 percent of the contributions made by Democratic Senatorial candidates to their open seat races.

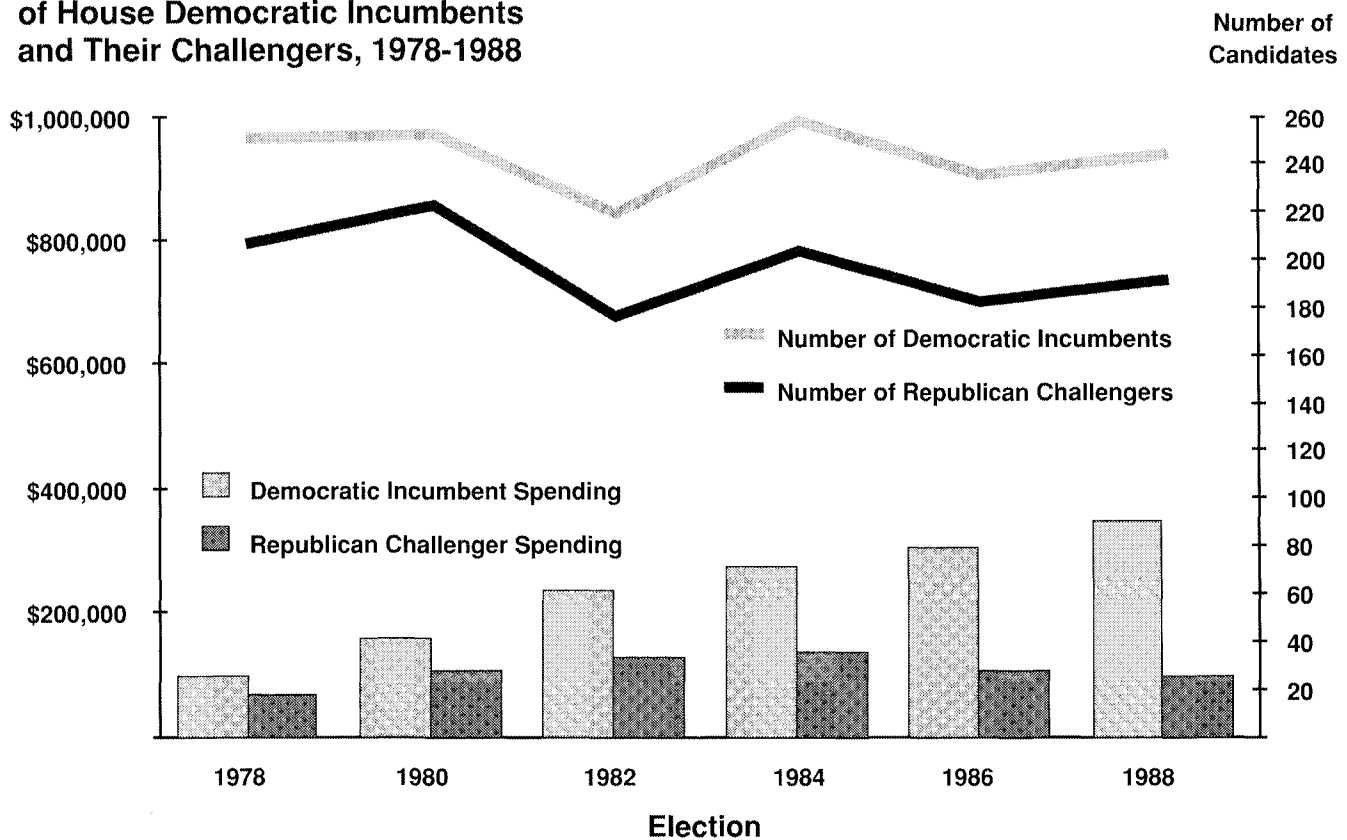
PAC Growth*



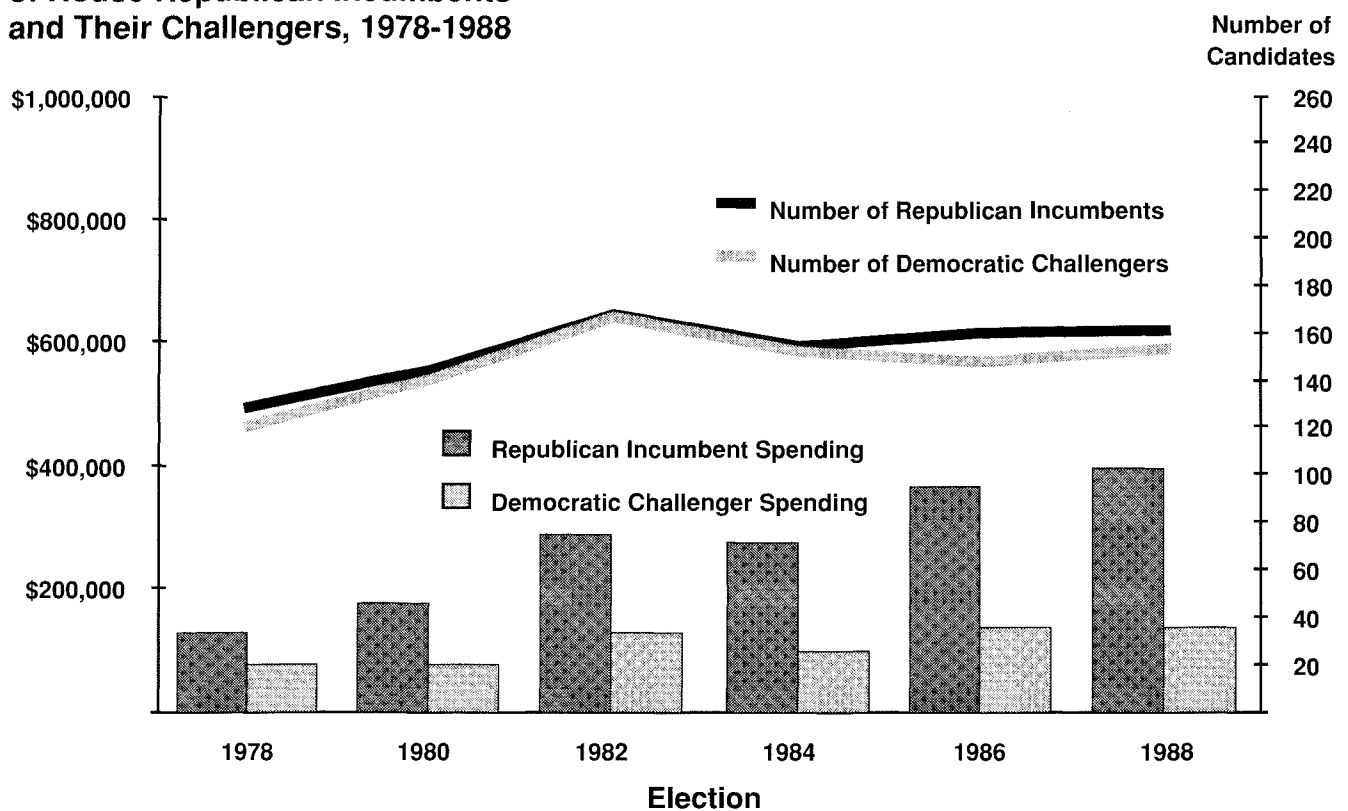
* For the years 1974 through 1976, numbers are not available for Nonconnected PACs, Trade/Membership/Health PACs and PACs in the "Other" category.

** "Other" category consists of PACs formed by corporations without capital stock and incorporated cooperatives.

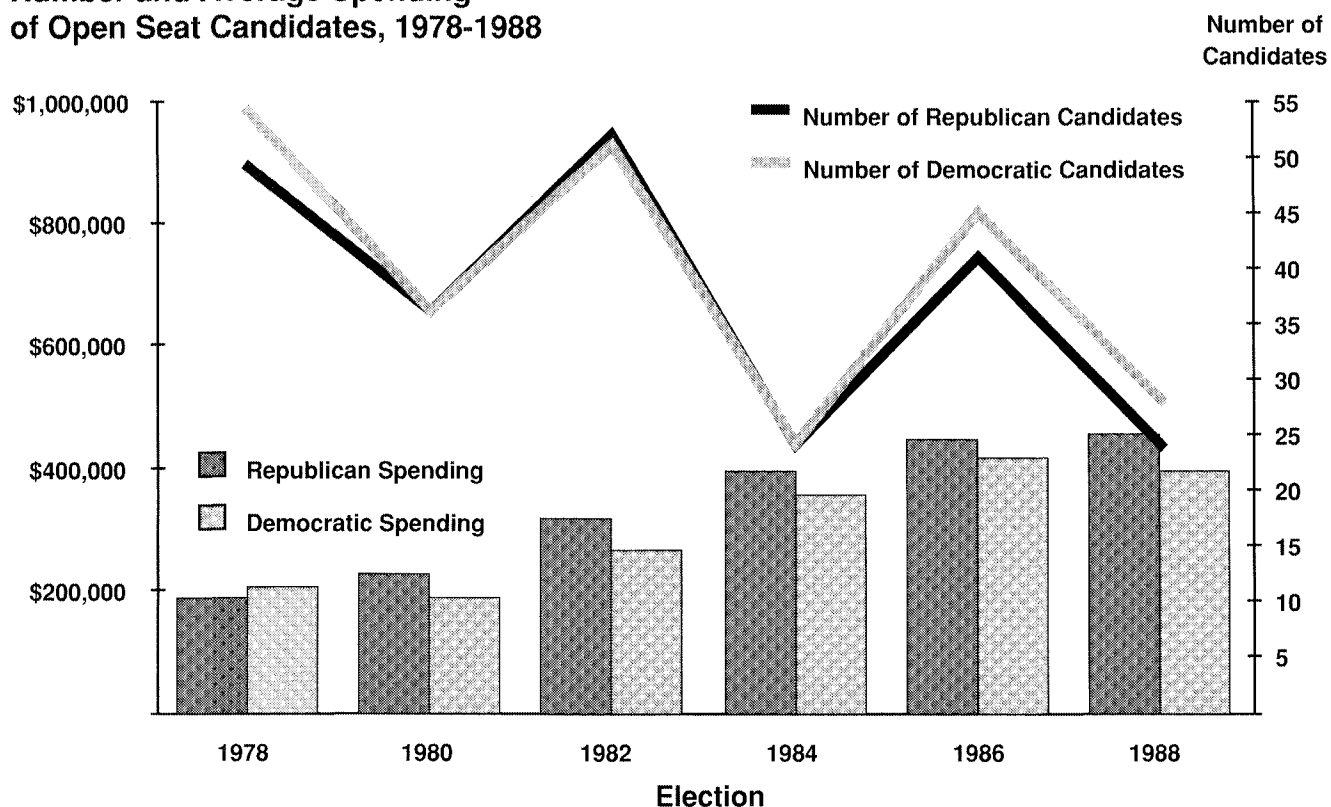
Number and Average Spending of House Democratic Incumbents and Their Challengers, 1978-1988



Number and Average Spending of House Republican Incumbents and Their Challengers, 1978-1988

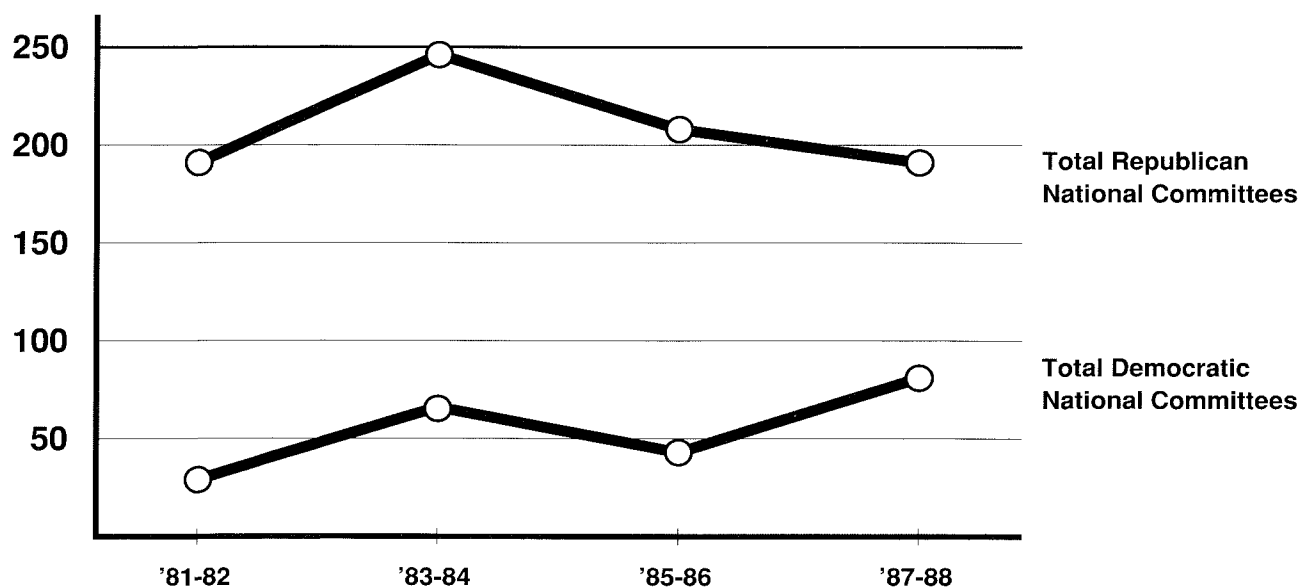


Number and Average Spending of Open Seat Candidates, 1978-1988



Party* Receipts Compared for Full 24 Months of Election Cycles, 1981-1988

Millions of Dollars



* Graph reflects total receipts of the national committee, the Senate campaign committee and the Congressional campaign committee.

Assistance to Committees and the Public

The Commission employs a variety of means to help political committees and the general public understand and comply with the law.

Videos and Publications

During 1988, the Commission produced two videotapes, one for Senate and House campaign committees entitled *Why Me?* and another for state party committees entitled *Help*. Designed to introduce committees to the election laws, the tapes presented an overview of major statutory provisions, including contribution limits and prohibitions, reporting rules and the treasurer's responsibilities. A tape and campaign guide were mailed to each registered candidate for the House and Senate and to each state party committee. In a further attempt to help candidates understand the law, the Commission completely revised its *Campaign Guide for Congressional Candidates and Their Committees*. Other publications—numbering more than 25—were updated as needed.

Telephone Assistance

Using the toll-free telephone number (800/424-9530) or local lines, anyone may obtain information about the law directly from Commission staff. Public affairs specialists answer questions and advise callers on what the law requires, citing the statute, regulations and advisory opinions. Reports analysts, who conduct desk audits of every report filed, are available to assist committee staff with specific reporting questions. During 1988, the Commission received over 72,000 calls requesting information.

Prior Notices

The Commission has several ways of reminding committee treasurers of their reporting obligations. An article in each January issue of the *Record* lists the reporting requirements for the entire year. As a reporting date approaches for a specific report, the

Record includes a subsequent article which details the coverage and due dates for that report. Finally, three weeks prior to a report's due date, the Commission mails a notice, along with the reporting form, to each committee treasurer required to file a report.

Conferences in 1988

More than 300 people attended three conferences cosponsored by the Commission and state election offices in 1988. Commissioners and FEC staff conducted workshops in Ohio, Kentucky and Washington. Political committee staff, attorneys, accountants and educators participated in workshops on candidate campaigns, party and PAC activity, and contributions and reporting.

Advisory Opinions

The Commission offers formal, legal guidance to any person who requests an advisory opinion. In response to letters requesting Commission advice on how the law applied to specific, factual situations, the agency issued 45 opinions in 1988. In addition to providing advice to requesters, advisory opinions serve as a source of guidance for other persons who encounter similar factual situations. Many of the advisory opinions issued by the Commission during 1988 are discussed under "Legal Issues" in Chapters 1 and 2.

Review of Reports

The Commission reviews every campaign finance report to ensure accurate and complete disclosure of financial activity and to encourage compliance with the law's reporting provisions. If the agency discovers a problem in the course of reviewing a report, it sends a letter to the committee requesting additional information (RFAl). The committee then has the opportunity to amend its report voluntarily and help preserve the integrity of the public record. Cooperation between the committee and the Commission often results in the settlement of a potential compliance matter without further action by the agency. When a committee fails to respond to

Reports Review Activity

| | 1980 | 1984 | 1988 |
|---|---------------|--------|--------|
| Number of Committees Reviewed | not available | 3,906 | 5,865 |
| Number of Reports Reviewed | 13,163 | 30,154 | 35,471 |
| Number of Reports Receiving RFAs | 2,224 | 6,292 | 5,328 |

Commission inquiries, the agency may decide to review the committee's operations through a field audit or to initiate a compliance action against the committee.

The table above summarizes the review process over the past three Presidential election years.

dent. In the event that conciliation fails, the agency may try to enforce the matter through litigation. The table on the next page compares the MUR caseload over the past four Presidential election years.

Enforcement

The Enforcement Process

Possible violations of the federal campaign finance law are brought to the Commission's attention either internally—through its own monitoring procedures—or externally—through formal complaints originating outside the agency. Potential violations become Matters Under Review (MURs).

All phases of the MUR process must remain confidential until a case is closed and put on the public record. Respondents are given a reasonable opportunity to demonstrate that no action should be taken against them. The Commission must first decide whether there is "reason to believe" a violation of the law has occurred. A "reason to believe" finding means that the agency will investigate the matter. If the Commission believes there is sufficient evidence to show that there is "probable cause to believe" a violation has occurred, the agency must try to resolve the matter informally through a conciliation agreement with the respon-

Caseload of MURs

| | 1976 | 1980 | 1984 | 1988 |
|------------------------------------|------|------|------|------|
| Cases Pending at Beginning of Year | 34 | 153 | 78 | 171 |
| Cases Opened During Year | 285 | 255 | 283 | 236 |
| Cases Closed During Year | 212 | 194 | 189 | 187 |
| Cases Pending at End of Year | 107 | 214 | 172 | 220 |

Expediting Enforcement

On May 12, 1988, the Commission voted to expedite FEC enforcement matters involving violations of the election law's reporting requirements. The plan called for a six-month trial period in which respondents who had filed their reports late or who had failed to file their reports would be offered an opportunity to enter into a conciliation agreement with the FEC at the time the agency found "reason to believe" they had violated the law's reporting requirements.

Under regular enforcement procedures, the respondent first receives notification of the FEC's "reason to believe" finding. He or she may subsequently request that the Commission approve a conciliation agreement before the agency finds "probable cause to believe" a violation of the election law has occurred. The Commission noted that this procedure had caused needless delay and expense for all parties concerned.

Under the trial program, late filer and nonfiler respondents were sent a standardized conciliation agreement at the time they were notified of the FEC's "reason to believe" finding. The proposed agreement contained an admission of their reporting violations and a civil penalty consistent with the severity of their reporting failures. If a respondent chose not to sign the agreement, arguments could still be presented to demonstrate why no further

action should be taken or why the civil penalty for a reporting violation should be mitigated. Alternatively, the matter would proceed to the next stage of the enforcement process.

In November, the Commission voted to make these expedited procedures permanent.

Judicial Review

On June 27, 1988, President Reagan signed into law an amendment to the judicial review procedures of the Federal Election Campaign Act eliminating the Supreme Court's mandatory jurisdiction. Prior to the amendment, the Supreme Court was required to hear, on appeal, any Constitutional questions pertaining to the FECA that had been certified by a district court to a court of appeals under 2 U.S.C. §437h(a). The amendment did not, however, eliminate the Supreme Court's discretionary power to review Constitutional issues in cases arising under section 437h. The Supreme Court's mandatory jurisdiction under 26 U.S.C. §§ 9010(c) and 9011(b)(2) was not altered.

Regulations

In 1988, the Commission studied the need for regulatory change in a number of areas, including travel exemptions, disclaimer notices, trade association

solicitations, debt settlement, corporate expenditures and allocation of expenses. Complex in nature, these matters became the focus of Commission activity. The agency published several notices in the *Federal Register* seeking public comments, considered new regulatory language, reviewed written comments and conducted hearings. The Commission experimented with a new approach to regulatory revision when it identified three areas of the regulations appropriate for revision and combined these narrower projects into a single Notice of Proposed Rulemaking. More specific information on the Commission's regulatory activity is included in the discussion of legal issues, below.

Legal Issues

During 1988, the Commission addressed several legal issues in federal election law through advisory opinions, regulation review and litigation. Soft money, expenditures by nonprofit corporations, contribution limits, affiliation, solicitations, and debt settlements were the dominant issues. Additionally, through litigation, the courts helped define the scope of the Commission's jurisdiction.

Soft Money

The national media gave considerable attention in 1988 to the use of "soft money" in federal elections. "Soft money" has generally been construed to mean funds that are raised and spent in connection with state and local elections. These funds are not, therefore, generally reportable under federal law and need not comply with the federal law's limits and prohibitions on contributions.

At issue was whether party committees were using "soft money" illegally in Presidential elections, whether it should be disclosed, to what extent it could be regulated under current law, and whether new legislation* was needed to monitor its use.

The Commission has been concerned with this issue for a number of years. In 1986, after conduct-

ing public hearings, the Commission concluded that evidence of improper use of soft money in federal elections was insufficient to justify the stringent rules suggested in a rulemaking petition submitted by Common Cause. The U.S. District Court** upheld the Commission's decision to deny the petition, but it did direct the FEC to clarify its allocation regulations.*** Subsequently, the court ordered the Commission to report to it, every 90 days, on Commission progress toward adopting new allocation rules.

On February 23, 1988, the Commission published a Notice of Inquiry seeking comments on possible approaches to take in writing proposed rules. The Commission received comments from one major party and two public interest organizations. On September 29, 1988, the agency published a Notice of Proposed Rulemaking, which laid out the issues, offered several approaches to allocating expenses and set a date for a public hearing. On December 16, representatives from the major parties and from two public interest organizations testified during a full day of hearings.

In his opening statement at the hearing, Chairman Thomas Josefiak noted that the proposed revisions to the regulations were aimed at ensuring that no activity that supports federal candidates is subsidized by funds raised outside the limits and prohibitions of federal election law. He said that the regulations and the Act flatly prohibit the use of soft money to influence federal elections and, if abuses of soft money occurred in the past election cycle, "the Commission will vigorously pursue any complaint brought before it." He also observed that the

** *Common Cause v. FEC*, 692 F. Supp. 1391 (D.D.C. 1987); 692 F. Supp. 1397 (D.D.C. 1988).

*** Current regulations require political committees with federal and nonfederal accounts to allocate expenses for joint federal/nonfederal activities between their two accounts on a reasonable basis. In a series of advisory opinions, the Commission has approved several allocation methods that would satisfy the "reasonable basis" requirement. Since 1984, the Commission's *Campaign Guide for Party Committees* has included the examples provided in these advisory opinions.

* See Commission's 1989 legislative recommendation, p. 33.

soft money controversy had largely focused on who raised the funds and how the money was raised rather than on how the funds were spent. Chairman Josefiak went on to observe that the Commission follows "the direction of the courts and Congress" in defining the Commission's jurisdiction and in interpreting the Act to permit reasonable allocation, stressing that the Commission "cannot generally prohibit or limit the raising of soft money for non-federal purposes by virtue of an imputed or tangential effect upon federal elections." He noted that the Commission can, however, restrain the use of soft money by specifying a fair and reasonable allocation of expenses for the federal share of combined federal and nonfederal activity.

The Commission heard differing views from representatives of party committees and public interest groups. Party committee witnesses saw no evidence that soft money was improperly used in the past Presidential election, arguing that the problem was "perceptual," caused by misleading news articles. They claimed that soft money was properly used to fund state and local races.

In contrast to the views of the party committees, the Center for Responsive Politics and Common Cause contended that soft money had undermined the integrity of the public funding law. Common Cause suggested that Presidential candidates who receive public funding be required to certify that they will not raise any soft money.

On the specific issue of allocation, Common Cause urged the Commission to reject the use of any prohibited funds for voter registration and get-out-the-vote drives, while the party representatives advocated allocation methods that would give parties different options to account for the varying levels of federal and nonfederal activity among party committees.

Expenditures by Nonprofit Corporations

Ever since the Supreme Court's 1986 decision in *FEC v. Massachusetts Citizens for Life (MCFL)*,*

the Commission has been faced with questions concerning political expenditures by corporations. In *MCFL*, the Court said that the Act's prohibition on corporate expenditures was unconstitutional as applied to independent expenditures made by a narrowly defined type of nonprofit corporation formed for ideological, rather than business, purposes. The Commission and the courts explored the application of the *MCFL* holding in three separate matters. In two of those instances, nonprofit organizations sought to qualify for the *MCFL* exemption unsuccessfully.

In AO 1988-22 the San Joaquin Valley Republican Associates, a nonprofit, nonmember corporation organized to enhance the visibility of the Republican Party, wanted to publish and distribute a periodical political newsletter, sponsor luncheons featuring candidates and also sponsor candidate debates. The Commission ruled that these activities would be considered expenditures to influence federal elections. They were not, in the Commission's view, exempt under the Supreme Court's *MCFL* ruling because, first, some of the spending programs proposed by the organization were in-kind contributions, not independent expenditures. (The *MCFL* ruling only applied to independent expenditures). Secondly, the Commission noted, the *MCFL* exemption applied to political organizations that only occasionally engaged in independent spending on behalf of candidates, and not to organizations such as the Republican Associates whose major purpose was partisan campaign spending.

In *United States Defense Committee v. FEC*,** a case which dates back to March 1984, the United States Defense Committee (USDC), an incorporated membership organization, filed suit against the FEC seeking reversal of Advisory Opinions 1983-43, 1984-14 and 1987-7. In all three opinions the Commission concluded that certain USDC voter guides and other materials proposed for publication by

* *Massachusetts Citizens for Life, Inc. v. FEC* v., 589 F. Supp. 646, (D.Mass., 1984), aff'd, 769 F.2d 13 (1st Cir. 1985) aff'd, 479 U.S. 238 (1986).

** *United States Defense Committee, Inc. v. FEC*, No. 84-CV-450 (N.D.N.Y. April 27, 1988) (unpublished order), vacated and remanded, 861 F.2d 765 (2d Cir. 1988).

USDC were prohibited by 2 U.S.C. §441b because the language used in the materials suggested an election-influencing purpose.

On April 12, 1988, the U.S. District Court for the Northern District of New York held that the Supreme Court's decision in *FEC v. Massachusetts Citizens for Life* did not apply here because, in order to be eligible for the MCFL exception, a non-profit corporation had to have a policy of not accepting contributions from business corporations or labor organizations. Since USDC had accepted money from its corporate members, the court found that the organization was not eligible for the MCFL exception. USDC appealed the decision to the U.S. Court of Appeals for the Second Circuit. The Second Circuit vacated the district court's decision, holding that advisory opinions issued pursuant to 2 U.S.C. §437f were not ripe for review. The Court of Appeals expressed no opinion about the district court's holding that USDC was not eligible for the MCFL exception.*

MCFL issues were not restricted to advisory opinions and compliance. They became the subject of regulatory action as well. Partly in response to a petition for rulemaking, submitted by the National Right to Work Committee (NRWC), and also as an attempt to explore other issues raised by MCFL, the Commission published an Advance Notice of Proposed Rulemaking in January 1988. The notice sought comments on the following:

- How should the Commission determine when a nonprofit organization is an MCFL-type entity?

- What are the appropriate reporting and disclosure requirements for an MCFL-type organization?
- When does an MCFL-type organization become a political committee?
- Should the Commission adopt an "express advocacy" standard for determining when a prohibited corporate or union expenditure is made under section 441b of the election law?

In response to this notice, the Commission received over 17,000 comments on how to revise its rules.

The Commission explored the subject further in a public hearing held on November 16. One witness argued that nonprofit corporations should qualify as MCFL-type organizations even if they receive marginal corporate or labor support. To determine when an MCFL-type organization became a political committee, the witness recommended that the agency apply a test — either a monetary threshold or a primary purpose test (i.e., was the organization primarily involved in political activity?).

Another witness contended that the "express advocacy" standard should be used to define when a prohibited corporate or labor expenditure was made. He suggested that the FEC look to the definition of express advocacy as presented in the Ninth Circuit Court of Appeals decision in *FEC v. Furgatch*.**

* In *Michigan Chamber of Commerce v. Austin*, a separate action not directly involving the FEC, the U.S. Court of Appeals for the Sixth Circuit ruled that a Michigan law prohibiting corporations from making independent expenditures was unconstitutional as applied to the Michigan State Chamber of Commerce. The court held that the Michigan Chamber qualified as an MCFL-type corporation. The Sixth Circuit denied rehearing *en banc* with three judges dissenting, but on January 17, 1989, it granted a stay of mandate pending a petition for *certiorari*. *Michigan Chamber of Commerce v. Austin*, No. 86-1867 (6th Cir., Sept. 15, 1988), reh'g denied.

** *Furgatch: FEC v.*, No. 83-0596-GT-(M) (S.D. Cal. 1984) (unpublished opinion), rev'd, 807 F.2d 857 (9th Cir.), cert. denied, 108 S.Ct. 151 (U.S. Oct. 5, 1987), on remand, (S.D. Cal. April 26, 1988) (unpublished order), appeal filed (9th Cir. May 9, 1988).

Contribution Limits

Application of Limits After Election. During its 13-year history, the Commission has repeatedly been asked to clarify what is and what is not a contribution. The issue presented itself again in *FEC v. Ted Haley Congressional Committee*.^{*} In reversing the district court decision, the U.S. Court of Appeals ruled that money given or loaned after an election to retire campaign debts constituted contributions. As such, they were subject to the Federal Election Campaign Act's limitations and prohibitions. This interpretation has long been the Commission's view, as well.

The issue came up again in September 1988 when the Commission denied a petition for rule-making submitted by the Haley Committee. The Haley Committee had suggested that a new subsection be added to the regulations to state that post-election donations would not be subject to the contribution limits provided a contributor could demonstrate that the donation had not been made for the purpose of influencing that election.

In denying the petition, the Commission noted the appeals court's affirmation of the agency's consistent interpretation of its policy on post-election contributions in FEC advisory opinions and regulations.

Travel Exemption. Current regulations allow individuals—both paid staff and volunteers—to incur a limited amount of unreimbursed expenses for travel on behalf of a candidate or party without these expenses being considered contributions or expenditures. Current rules also allow volunteers to make unlimited personal expenditures to cover their subsistence expenses when they travel. A proposed new rule published in the *Federal Register* on September 8, 1988, would extend this subsistence exemption to paid staff as well. On further consideration, the Commission directed the Office of General Counsel to prepare a second Notice of Proposed

Rulemaking to seek comments on several alternative approaches to this issue.

Affiliation

In litigation and in a number of AOs, the definition of "affiliation" between political committees was clarified. The issue is important because affiliated committees are subject to a single contribution limit on both the contributions they receive and those that they give to candidates and other political committees.

In *Antosh v. FEC*,^{**} the U. S. District Court for the District of Columbia ruled that three PACs were not affiliated. Mr. Antosh had alleged that the three labor PACs, separate segregated funds of international unions belonging to the AFL-CIO, had failed to report their affiliation and had exceeded their combined \$5,000 per election contribution ceiling for each candidate. The court supported the FEC's view that legislative history demonstrated that Congress had not intended to impose a single contribution limit on the AFL-CIO's PAC and the PACs of international unions affiliated with the AFL-CIO.

In another action, AO 1988-4, the Commission addressed the issue of affiliation of PACs resulting from a corporate merger. The Commission concluded that, even though the Borg-Warner Corporation did not become a direct subsidiary of Merrill Lynch Corporation as a result of their merger, the two corporations were affiliated by virtue of the control Merrill Lynch had over Borg-Warner. Therefore, the separate segregated funds of the two corporations were affiliated.

AO 1988-37 was concerned with affiliation between two corporate PACs as a result of a leveraged buy-out transaction. The Commission determined that the separate segregated funds of the Montgomery Ward Corporation and the General Electric Company (GE) were affiliated by virtue of the relationship that developed between the two sponsoring organizations as a result of a leveraged

^{*} *Ted Haley Congressional Committee: FEC v.*, 654 F. Supp. 1120 (W.D. Wash. 1987, rev'd, 852 F.2d 1111 (9th Cir. 1988).

^{**} *Antosh v. FEC*, 2 Fed. Elec. Camp. Fin. Guide (CCH) 9260 (D.D.C. Jan. 5, 1988); unpublished opinion (D.D.C. Mar. 24, 1988).

buy-out. Through a complex network of subsidiaries and a holding company, GE controlled Montgomery Ward (for purposes of the federal election law) by having a potential veto over important Montgomery Ward management decisions.

In AO 1988-14, the Commission ruled that two affiliated corporations could jointly sponsor a separate segregated fund and could solicit contributions from the restricted class of both corporations. The Commission noted that the official name of the joint PAC had to include the full name of both corporations.

The Commission determined in AO 1987-34 that the PACs of two corporations, who jointly owned a partnership, were not affiliated for contribution purposes. The fact that the two corporations had formed a joint venture partnership did not, by itself, make the PACs of the two corporations affiliated. However, the PAC of the joint venture's subsidiary was affiliated with the PACs of the two corporations.

In a related issue, the Commission examined the relationship between a parent organization and the PACs of its state members. In AO 1988-43, the Commission concluded that a national organization, which did not have a PAC, was not responsible for the activities of the PACs of its state members. The American Society of Anesthesiologists, a national organization, had no responsibilities regarding the PACs of its state members. The treasurer of each PAC was responsible for ensuring compliance with the election law.

Solicitations

Definition of Member. The definition of "member," as it related to PAC solicitations, was the subject of several advisory opinions. In AO 1987-31, the Commission ruled that the Chicago Board Options Exchange could solicit those members who paid dues, had rights in governing the organization and had other significant membership privileges. Members who did not meet these requirements could not be solicited.*

In another advisory opinion, 1988-38, the Commission concluded that the Chicago Board of Trade could send partisan communications to and solicit contributions from members who paid dues and had certain rights in governing the organization, such as electing board members. The Commission concluded that there was only one solicitable member for each leased membership and that the lessors—not the lessees—retained the membership. Those who did not qualify as members included individuals who represented firms or who leased their memberships from full members.

In AO 1988-39, the Commission again clarified the definition of member when it concluded that individuals with leased memberships on the Chicago Mercantile Exchange were not members for solicitation purposes. Under the Exchange's rules, the lessor was the qualified member because he or she retained the right to vote, was ultimately responsible for the payment of dues and retained proprietary rights over his or her membership.

Trade Association Solicitations. In AO 1988-3, the Commission addressed the issue of solicitations by trade associations with corporate and noncorporate members. The Commission ruled that the American Pilots Association could solicit contributions from individual pilots who owned stock or equity in one of its incorporated associations and from an unincorporated member organization itself. It could not, however, solicit individual members of these unincorporated groups because such individuals were not APA members.

Trade association solicitations were also the subject of regulatory review. A proposed amendment would make clear that, if a subsidiary corporation was a member of a trade association but its parent corporation was not, the trade association could not solicit the parent corporation's restricted class. Current rules already make clear that, if the parent is a member but the subsidiary is not, the trade association may not solicit the restricted class of the subsidiary corporation. The Commission sought comment on this in a Notice of Proposed Rulemaking published in the *Federal Register* in September 1988.

* The Commission reconsidered this opinion on February 9, 1989.

Definition of Executive and Administrative

Personnel. In an opinion addressing solicitable personnel, AO 1988-11, the Commission ruled that the National Association of Trade and Technical Schools (NATTS), representing incorporated private schools, could solicit teachers employed by NATTS member schools. The teachers whom NATTS or its fund could solicit were those who met the statutory definition of “executive or administrative personnel.” Teachers who were represented by a labor organization were not solicitable. On the other hand, in AO 1988-26, the Commission said that UNC Incorporated and its separate segregated fund could not solicit contributions from training instructors who were permanent employees of a UNC subsidiary. The Commission based its opinion on the fact that the instructors were paid on an hourly basis and therefore did not qualify as “executive or administrative personnel” under the election law and FEC regulations.

Disclaimer Notice Requirements. Under current regulations, if a person solicits the general public for contributions to a political committee that is not authorized by a candidate, the solicitation must clearly state the person’s full name. Under a proposed amendment to the regulations, which would bring the regulations into closer uniformity with the Act, the solicitation would have to state additionally whether it was authorized by a candidate or any of his or her authorized committees or agents—even if the solicitation did not expressly advocate the candidate’s election or defeat. A Notice of Proposed Rulemaking (NPRM) on this matter was published in September 1988. After considering this issue further, the Commission directed OGC to prepare a second NPRM seeking comment on two alternative approaches to this issue.*

*See also the Commission’s 1989 legislative recommendation, p. 37.

Debt Settlement

On December 6, 1988, the Commission published a Notice of Proposed Rulemaking in the *Federal Register*, which proposed deleting 11 CFR 114.10 and replacing it with a new Part 116. The proposed rules would cover debts owed by political committees to corporate creditors, as in the current rules, and to others such as unincorporated vendors and individuals. The draft rules sought comment on whether the debt settlement procedures should be applied only to political committees preparing to terminate. A second issue for comment was whether an indebted terminating committee should submit, for Commission review, a comprehensive debt settlement plan that covered all outstanding debts and provided for the disposition of the committee’s remaining funds and assets. In addition, the Notice of Proposed Rulemaking offered proposed language concerning ongoing committees, disputed debts, advances by campaign staff and others, salary owed to committee employees, transfers involving indebted committees and the definition of excess campaign funds. Hearings on these regulations were set for February 1989.

Enforcement Issues

Statement of Reasons. In October 1986, the Commission agreed that it would place a statement of reasons on the public record whenever a majority of the Commissioners, in dismissing a complaint-generated matter, rejected the General Counsel’s recommendation. Since that time, in situations where the Commission did not take action because it lacked a majority (e.g., a 3-3 split), Commissioners sometimes issued statements of reasons even though no formal policy required them to do so. In *Common Cause v. FEC*,** however, the Appeals Court for the D.C. Circuit ruled that, in all future complaint generated cases involving a 3-3 split, the Commissioners would have to issue statements of reasons. During 1988, the resolution of two suits

***Common Cause v. FEC*, 665 F. Supp. 619 (D.D.C. 1986) rev’d, 842 F.2d 436 (D.C. Cir. 1988).

depended in part upon Commission statements of reasons.

The first case arose in 1984 when Common Cause filed an administrative complaint with the FEC against the Reagan-Bush '84 General Election Committee, alleging that the Committee had failed to report some travel expenses. In December 1986, the FEC's General Counsel recommended that the Commission find "reason to believe" that the Reagan campaign had violated the election laws. The Commission, however, voted four to two to find "no reason to believe" that the Reagan campaign had violated the law. In *Common Cause v. FEC*,^{*} Common Cause challenged the FEC's dismissal decision.

The district court ordered the Commissioners who voted against proceeding to issue statements of reason. They did so in October 1986. Not satisfied with the statements, the court ordered the agency to provide a fuller explanation of why the Commissioners had dismissed the complaint. In July 1988, the Commissioners submitted a second set of statements. The following September, the court accepted a joint stipulation of dismissal in which Common Cause and the FEC agreed to the dismissal of Common Cause's complaint, with prejudice. The stipulation stated that Common Cause did not abandon its position that the FEC's action on the administrative complaint was contrary to law, and the FEC did not abandon its position that its dismissal of the complaint was reasonable.

In the second case, statements of reasons were issued after the Commission split 3-3 on the General Counsel's recommendation. In *Stark v. FEC*,^{**} Congressman Stark filed suit in U.S. District Court for the District of Columbia in June 1987, claiming that the FEC's dismissal of his administrative complaint was contrary to law. Congressman Stark had filed a complaint with the Commission contending

that the American Medical Association Political Action Committee (AMPAC) had made excessive contributions to his opponent. The Commissioners split 3-3 on whether to adopt the General Counsel's recommendation that the Commission find "reason to believe" that AMPAC had violated the law. Since the Commission could act only on "the affirmative votes of four members," the agency then voted unanimously to close the enforcement file. The three Commissioners who voted not to find "reason to believe" a violation had occurred issued a statement of reasons. Citing the *DCCC ruling*,^{***} the district court found that the FEC had not acted contrary to law. The court noted that the Commissioners had issued statements explaining their reasons for voting against the General Counsel's recommendations. Applying a deferential standard of review, the court found that the statement of reasons was "reasonable."

Jurisdiction of FEC. In *Ralph J. Galliano v. U.S. Postal Service*,^{****} the Court of Appeals ruled that the Federal Election Campaign Act superseded the enforcement authority of the Postal Service under 39 U.S.C. §3005 with regard to name identifications and disclaimers of organizations that solicit political contributions. This case arose when the Congressional Majority Committee (CMC), a multicandidate political committee, mailed out letters soliciting contributions to CMC's independent expenditure project, "Americans for Phil Gramm in 84"(APG). Mr. Gramm, a candidate for the U.S. Senate, initially filed a complaint with the FEC alleging that CMC had unlawfully used his name in the title of its fundraising project and had failed to state that Mr. Gramm had not authorized CMC to solicit contributions.

The Commission determined that CMC had failed to include a disclaimer notice in its first solicitation

^{*} *Common Cause v. FEC*, 630 F. Supp. 508 (D.D.C. 1986) 676 F. Supp. 286 (D.D.C. 1986); unpublished opinion, (D.D.C. June 15, 1988).

^{**} *Stark v. FEC*, 683 F. Supp. 836 (D.D.C. 1988).

^{***} *Democratic Congressional Campaign Committee v. FEC*, 645 F. Supp. 169 (D.D.C. 1986), *aff'd* in part and remanded, 831 F.2d 1131 (D.C. Cir. 1987).

^{****} *Galliano v. U.S. Postal Service*, 836 F.2d 1362 (D.C. Cir. 1988).

mailings, but the Commissioners split on the issue of CMC's using Mr. Gramm's name in the title of its independent expenditure project.

Following the FEC action Mr. Gramm filed a complaint with the U.S. Postal Service alleging that CMC's solicitations contained false representations. The Postal Service agreed. Mr. Galliano, representing CMC, contested the Postal Service decision in the U.S. District Court for the District of Columbia. The district court affirmed the Postal Service's decision, which Mr. Galliano appealed.

At the request of the appeals court, the FEC filed a friend of the court brief. The FEC argued that, since Congress had granted the agency exclusive jurisdiction over provisions of the law, "matters covered by the Act must be brought before the Commission in the first instance even if another statute might otherwise arguably be applicable." The FEC went on to note that "the courts have long recognized that tension between a statute of general application and a statute which specifically addresses a particular subject must be resolved in favor of the specific statute."

Reversing the district court ruling, the appeals court held "that the FEC is the exclusive administrative arbiter of questions concerning the name identifications and disclaimers of organizations soliciting political contributions."

Judicial Review of Advisory Opinions. In *United States Defense Committee v. FEC*, the issue was court review of FEC advisory opinions. In filing this suit, the United States Defense Committee (USDC) had asked the U.S. District Court for the Northern District of New York to reverse the Commission's decision in three advisory opinions. While the district court acknowledged that the election law did not specifically provide for judicial review of FEC advisory opinions, the court found that its authority to review the complaint had not been "explicitly restricted by statute or by Congress...." *

* See page 18 for a discussion of the district court's ruling on the merits.

The U.S. Court of Appeals for the Second Circuit reversed this ruling by the district court. In deciding that USDC's case was not ripe for judicial review, the appeals court said that nothing in the legislative history indicated that Congress thought that advisory opinions were reviewable. Further, the court explained, an advisory opinion is not "final or binding." Any person who acts contrary to an advisory opinion is entitled to the full benefit of the enforcement procedures in 2 U.S.C. §437g. Because the suit pertained to the application of the Supreme Court's ruling in the *MCFL* case and because the Commission was currently considering possible new rules in this area, the court concluded that judicial review of the AOs was especially inappropriate in this case.

Complaint Filed Twice. In *National Rifle Association v. FEC*,** the district and appeals courts ruled that a person who failed to appeal an FEC determination on an administrative complaint within the requisite 60 days (under 2 U.S.C. §437g(a)(8)) could not obtain a second opportunity for judicial review by filing another administrative complaint repeating the substance of the first. This case arose when the National Rifle Association (NRA) filed suit challenging the FEC's dismissal of NRA's third administrative complaint against Handgun Control, Inc. (HGI). All three of NRA's administrative complaints had challenged HCI's status as a membership organization under the election law. With respect to NRA's third administrative complaint, the FEC had dismissed it, finding that the allegations were virtually identical to those raised in NRA's second complaint.

In dismissing NRA's suit, the courts found that NRA's challenge to the FEC's dismissal of its third complaint constituted an untimely appeal of an earlier FEC dismissal of another administrative complaint.

** *National Rifle Association v. FEC*, No. 86-2285 (D.D.C. Oct. 19, 1987) (unpublished opinion), aff'd, 854 F.2d 1330 (D.C. Cir. 1988).

Clearinghouse on Election Administration

The Commission's National Clearinghouse on Election Administration serves as a central exchange for research and information on the administration of federal elections. The following paragraphs describe the projects and activities undertaken by the Clearinghouse during 1988.

Election Directory 88

An update of the Election Directory 85, this volume provides names, titles, addresses and telephone numbers of state and federal officials involved in running elections. It also contains a listing of state and local offices concerned with voter registration.

Voting System Standard Project

The Clearinghouse continued to develop voluntary performance and design standards for electronic computerized voting systems in terms of their reliability, security and accuracy. The study examines three types: punchcard, marksense and direct recording electronic systems. The Commission plans to formally issue the standards and associated documents in the summer of 1989. Related management guidelines will be released later in the year.

Voting System Standards for Punchcard and Marksense Systems (Hardware and Software). The development of punchcard and marksense equipment is part of the research stemming from a 1982 study mandated by Congress. (See, below, *Voting System Standards for Direct Recording Electronic Systems*.) This publication will present hardware and software specifications, a description of the quality assurance and documentation required, software and system security, qualification testing and measurement procedures, and acceptance testing. *Voting System Standards for Direct Recording Electronic Systems (Hardware and Software).* The development of voluntary voting system standards for direct recording electronic systems is the final stage of the Voting System Standards Project. This seg-

ment of the project emphasizes the development of hardware and software standards and appropriate testing procedures for this generic type of system.

Implementation Plan, System Escrow Plan, Accreditation Plan and Election Management Guidelines.

This project complements the hardware and software standards. The implementation plan will explain how the voluntary standards can be best implemented, what systems would be grandfathered and the use of escrow agreements to safeguard proprietary software and documentation. The system escrow plan will describe procedures for placing proprietary voting system software and documentation in escrow. The accreditation plan will outline a method for identifying qualified escrow agents and voting system test authorities. In separate publications, guidelines relevant to the Voting System Standards will be presented. The management guidelines will summarize accepted practice on pre-election testing, procurement and contracting, operations, and equipment maintenance and storage as they relate to punchcard, marksense and direct recording electronic voting systems.

FEC Journal of Election Administration

The Autumn 1988 *Journal* offered articles on the new blank ballot, the nomination process, the Electoral College, voter participation and voter accessibility. In addition to reporting on current developments in the field of election administration, the periodical also kept readers abreast of Clearinghouse activities and provided convenient order forms for Clearinghouse studies. The *Journal* is free upon request.

Campaign Finance Law 88

Campaign Finance Law 88 provides quick reference charts and detailed state-by-state descriptions of state campaign finance report filing requirements, contribution and solicitation limitations, special tax or public financing provisions, regulatory agencies and many other important features of state campaign finance laws.

Projects Under Way

Federal Election 88 will summarize, by State, office and candidate, the results of the elections for U.S. President, U.S. Senate and U.S. House of Representatives. Publication is expected in Spring 1989.

Ballot Access will be a four-volume publication that summarizes state access requirements for Presidential and Congressional contests in primary and general elections. It will also document filing procedures for major, minor and independent candidates. Publication is scheduled for Fall 1989.

Election Case Law will trace trends and developments in litigation concerning absentee balloting and voter registration. The volume will summarize decisions rendered by both the U.S. Supreme Court and State supreme courts. Publication is expected in late 1989.

Election Contests and Recounts will update a 1977 study that examined state procedures for conducting recounts and resolving contested elections. Interaction of States with the Congress in disputed contests will also be covered. Publication is expected in January 1990.

Chapter 3

The Commission

Commissioners

Commission officers during 1988 were Chairman Thomas J. Josefiak and Vice Chairman Danny Lee McDonald. On December 15, 1988, Commissioner McDonald was elected 1989 Chairman and Commissioner Lee Ann Elliott, 1989 Vice Chairman. Biographies of all the Commissioners appear in Appendix 1.

Personnel and Labor Relations

Personnel transactions during 1988 increased over 50 percent from the previous year. Most of this increase was due to the staff additions for the 1988 Presidential elections.

A new wellness program, instituted in 1988, focused on CPR training, health screenings and health-related presentations. Also, the Commission placed increased emphasis on counseling services provided through the Employee Assistance Program. This program was designed to assist employees in resolving problems by providing professional counselors, at no charge, on a confidential basis. Both supervisors and staff were provided training and orientation on the program.

By year's end, preparation was under way for the renegotiation of the labor agreement between the Commission and the National Treasury Employees Union. The present agreement expires in early 1989.

Administrative Management

The Commission's administrative management activities during 1988 reached a four-year high. Over 1800 contracting and procurement transactions provided Commissioners and staff with \$2,078,000 worth of support services, supplies and materials. Other supportive functions included the dispatch and accountability of approximately 322,600 pieces of outgoing mail, the preparation of 22 publications for printing and the production of over 11,000,000 photocopies.

The Commission is responsible for ensuring a safe working environment in its office and warehouse space. Continuing an environmental testing program begun in 1987, the Commission tested for the presence of asbestos fibers and evaluated the quality of the air and drinking water in the building. No asbestos fibers were found, and the water and air quality were within acceptable standards. Also, tests for the presence of radon gas were negative. The Commission also implemented a Building Management Reporting System to alert GSA and the lessor on any problems with the office space.

FEC Budget

Fiscal Year 1988

The Commission's FY 1988 appropriation was \$14.174 million. Although this amount was \$1.4 million more than the FY 1987 budget, nearly 76 percent of it was to maintain the same level of activity. The remaining funds provided for 13 additional staff over the normal base of 245 FTE staff, or a total of 258 FTE. Both Congress and OMB recognized the need for additional staff to handle the unprecedented workload of an open Presidential primary for both parties.

Additional staff were assigned to process the matching fund requests of 1988 Presidential primary candidates, to process a much larger volume of campaign finance data for the Presidential election and to complete the restoration of data input that had been cut back in the 1986 election cycle due to the Gramm/Rudman/Hollings sequester.*

Included in the restoration was the entry of individual contributions of \$500 and over. Additionally the Commission resumed sharing the agency's automated data base with the state officials responsible for federal campaign finance disclosure.

Fiscal Year 1989

Commission funding for FY 1989 was \$15.433 million, an 8.5 percent increase over FY 1988. Once

* See discussion of Disclosure, p. 9.

again Congress and OMB agreed on the need for 13 additional staff for the completion of the 1988 Presidential election workload. They also decided to fund two major initiatives: the installation of an agency-wide computer system and the addition of an enforcement team in the General Counsel's Office (OGC).

To improve Commission productivity, the FY 1989 budget provided a one million dollar allocation for an enhanced agency computer system. The funds were specifically earmarked for hardware, software, wiring and specialized training necessary to install the new system. It will replace the Commission's obsolete, stand-alone word processing equipment with new technology that is compatible with the Commission's various data bases including the disclosure data base. The new system will enable linked teams of staff to use the main ADP system for research and it will facilitate the communication of draft documents between professional and clerical staff. In addition, the new system will enable the FEC to explore new technologies such as digitized imaging, text search and test retrieval. The Commission plans to have the full system operational by the end of FY 1989.

Addition of a fourth enforcement team in OGC will enable the Commission to keep up with increasing caseloads, especially internally generated enforcement actions, and to reduce the existing case backlog. Even though the Commission uses thresholds and enforcement criteria that reduce the *de minimus* violations processed by the Commission, the enforcement workload has increased.

Despite the increased appropriation to cover a staff increment of 13 full time employees (FTE), the additional six FTE in OGC and the improved ADP system, the 1989 budget for the Commission is tight. This is due to the forced absorption of numerous increased pay costs for the past several fiscal years. For example, the Commission's appropriation for FY 1989 covered less than half of the 4.1 percent pay raise and it did not provide for the 31.5 percent increase in health benefits. The FEC also was forced to absorb the cost of half of the six additional staff in OGC. Although Congress has

authorized the Commission 264 FTE, the agency can only afford 258. The tight budget has also forced the Commission to cut back on Clearinghouse contracts and equipment replacement.

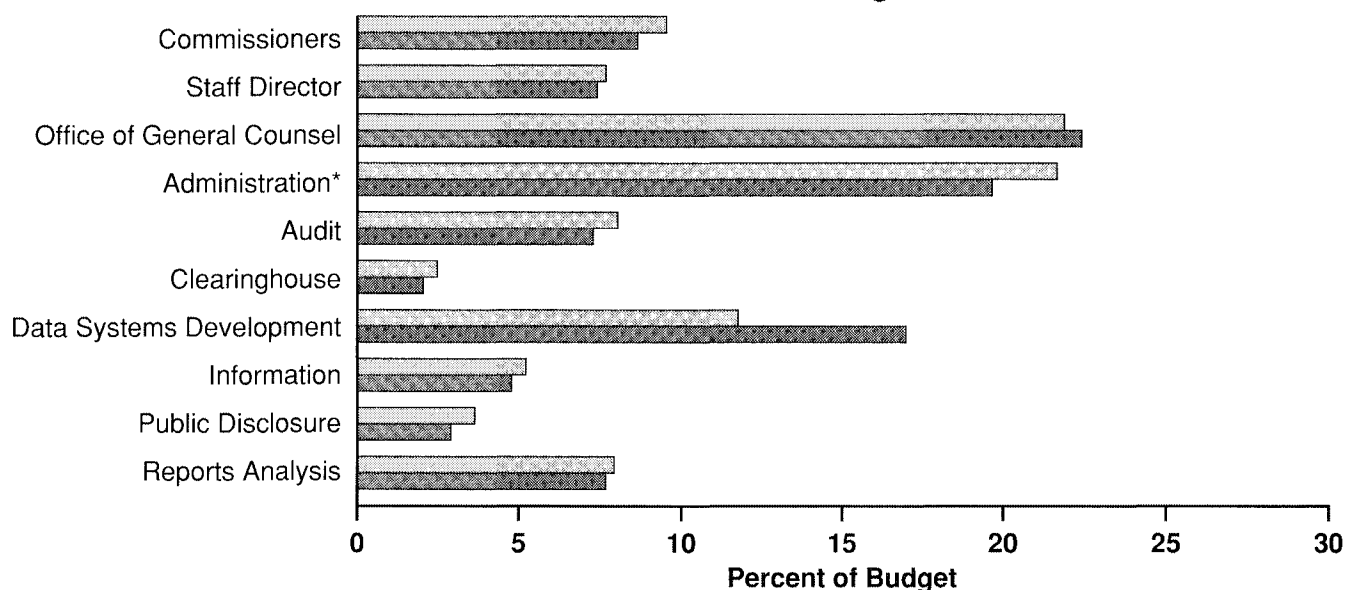
Nevertheless, the Commission was able to begin coding and entering into the data base contributions of \$200 and above. Previously, the threshold had been \$500. Additional costs to capture all such data for the entire 1990 election cycle were minimal.

The table below compares functional allocations of budget resources for fiscal years 1988 and 1989. The two graphs that follow compare allocations of budget and staff by division for the fiscal years.

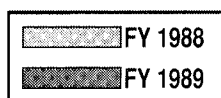
FEC Budget Functional Allocation

| | 1988 | 1989 |
|----------------------|-------------------|-------------------|
| Personnel | 9,822,217 | 10,530,500 |
| Travel | 199,335 | 243,000 |
| Motor Pool | 11,908 | 12,900 |
| Commercial Space | 17,411 | 17,700 |
| Equipment Rental | 254,509 | 248,000 |
| Printing | 267,047 | 217,500 |
| Support Contracts | 735,879 | 650,000 |
| Admin. Expenses | 112,944 | 156,300 |
| Supplies & Materials | 187,226 | 170,000 |
| Publications | 117,381 | 138,600 |
| Telephone/Telegraph | 294,172 | 283,000 |
| Postage | 148,694 | 90,500 |
| GSA Space | 1,617,034 | 1,641,000 |
| Equipment Purchases | 210,478 | 857,000 |
| Training | 31,828 | 90,000 |
| GSA Services, Other | 116,554 | 87,000 |
| Total | 14,144,617 | 15,433,000 |

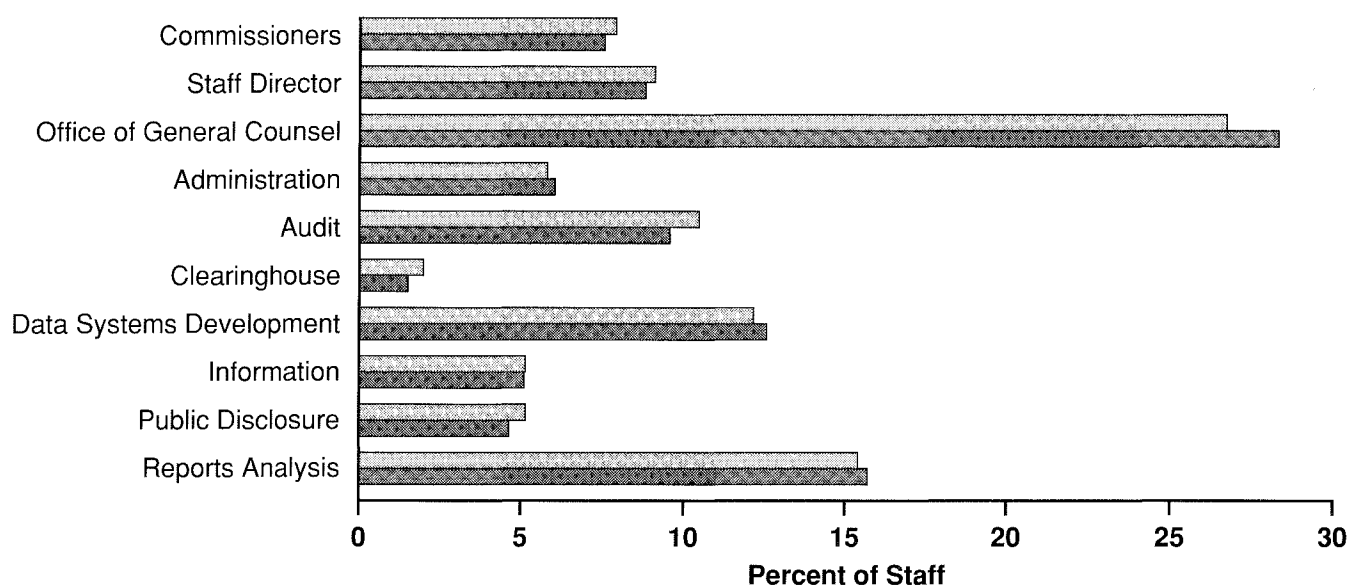
Divisional Allocation of Budget



* Administration budget includes rent, supplies, services, etc. for the entire Commission.



Divisional Allocation of Staff*



* The Commission averaged 252.4 full-time equivalent positions (FTE) in FY 1988 and it projected 258 FTE for FY 1989.

Chapter 4

Legislative Recommendations

Public Financing

Presidential Election Campaign Fund (1989)*

Section: 26 U.S.C. §§9001-9013, 9031-9042 and 6096

Recommendation: Congress should be alert to the fact that, based on Commission projections, by 1996 the Presidential Election Campaign Fund may lack sufficient money to fully fund all phases of the Presidential elections: primaries, conventions and general election. Congress may wish therefore to modify the overall scheme for financing Presidential elections.

Explanation: Under the current rate of taxpayer checkoffs and the current level of demand for federal funds in Presidential elections, there is serious doubt as to whether the Presidential Election Campaign Fund will have sufficient funds to cover all phases of the 1996 Presidential elections. The fund may even be insufficient by 1992.

After expected total disbursements of \$176 million during the 1988 election cycle, the balance in the Fund will be approximately \$50 million. With an estimated \$35 million added by taxpayers each year, the 1992 balance would be a projected \$190 million. This amount might cover the disbursements associated with the 1992 election. After the 1992 election, however, the balance in the Fund will approach zero. If taxpayer checkoffs continue at the current level of \$35 million per year, the balance by 1996 will be approximately \$140 million—some \$35 million less than the amount distributed in 1988.

At 26 U.S.C. §9006 (c), the law provides for a pro rata distribution of monies if the Presidential Election Campaign Fund is insufficient to satisfy the full entitlement of all eligible candidates in the general election. Under 26 U.S.C. §9003(b), major

party candidates may accept contributions toward the general election to make up any deficiency resulting from this pro rata distribution. Such a result, however, would clearly alter the Presidential public funding program, which has been in effect in the general elections since 1976.

The law (26 U.S.C. §9037(a)) mandates that the Secretary of the Treasury make funds available for the primary matching program only after he determines that there are sufficient funds available for the conventions and the general election. Consequently, primary candidates would be the first to suffer if a shortage occurred in the Fund.

Adjustment of Presidential Primary Threshold Submission

Section: 2 U.S.C. §9033(b)

Recommendation: Congress should consider raising the threshold amount of matchable contributions required to qualify for Presidential primary matching funds. To reach this higher threshold, Congress could increase the number of States in which the candidate must raise the qualifying amount of matchable contributions; and/or increase the total amount of qualifying matchable contributions that must be raised in each of the States.

Explanation: We have witnessed the fourth publicly financed Presidential election under the Federal Election Commission's authority. The statute provides for a COLA adjustment on the overall primary spending limitation, which has more than doubled since 1976. There is not, however, a corresponding adjustment made to the threshold requirements. Such an adjustment would ensure that funds continue to be given only to candidates who demonstrate broad national support.

Fundraising Limitation for Publicly Financed Presidential Primary Campaigns

Section: 2 U.S.C. §§431(9)(A)(vi) and 441a

Recommendation: The Commission recommends that the separate fundraising limitation provided to

* The date "1989" indicates that the recommendation was adopted for the first time in 1989. Recommendations without the date were initially adopted in previous years and reaffirmed by the Commission in 1989.

publicly financed Presidential primary campaigns be combined with the overall limit. Thus, instead of a candidate's having a \$10 million (plus COLA*) limit for campaign expenditures and a \$2 million (plus COLA) limit for fundraising (20 percent of overall limit), each candidate would have one \$12 million (plus COLA) limit for all campaign expenditures.

Explanation: Campaigns that have sufficient funds to spend up to the overall limit usually allocate some of their expenditures to the fundraising category. These campaigns come close to spending the maximum permitted under both their overall limit and their special fundraising limit. Hence, by combining the two limits, Congress would not substantially alter spending amounts or patterns. For those campaigns which do not spend up to the overall expenditure limit, the separate fundraising limit is meaningless. Many smaller campaigns do not even bother to use it, except in one or two States where the expenditure limit is low, e.g., Iowa and New Hampshire. Assuming that the State limitations are eliminated or appropriately adjusted, this recommendation would have little impact on the election process.

The advantages of the recommendation, however, are substantial. They include a reduction in accounting burdens and a simplification in reporting requirements for campaigns, and a reduction in the Commission's auditing task.

State Expenditure Limits for Publicly Financed Presidential Primary Campaigns

Section: 2 U.S.C. §441a

Recommendation: The Commission recommends that the State-by-State limitations on expenditures for publicly financed Presidential primary candidates be eliminated.

Explanation: The Commission has now seen four Presidential elections under the State expenditure limitations. Based on our experience, we believe that the limitations could be removed with no material impact on the process.

Our experience has shown that the limitations have little impact on campaign spending in a given State, with the exception of Iowa and New Hampshire. In most other States, campaigns are unable or do not wish to expend an amount equal to the limitation. In effect, then, the administration of the entire program results in limiting disbursements in these two primaries alone.

If the limitations were removed, the level of disbursements in these States would obviously increase. With an increasing number of primaries vying for a campaign's limited resources, however, it would not be possible to spend very large amounts in these early primaries and still have adequate funds available for the later primaries. Thus, the overall national limit would serve as a constraint on State spending, even in the early primaries. At the same time, candidates would have broader discretion in the running of their campaigns.

Our experience has also shown that the limitations have been only partially successful in limiting expenditures in the early primary States. The use of the fundraising limitation, the compliance cost exemption, the volunteer service provisions, the unreimbursed personnel travel expense provisions, the use of a personal residence in volunteer activity exemption, and a complex series of allocation schemes have developed into an art which when skillfully practiced can partially circumvent the State limitations.

Finally, the allocation of expenditures to the States has proven a significant accounting burden for campaigns and an equally difficult audit and enforcement task for the Commission.

Given our experience to date, we believe that this change to the Act would be of substantial benefit to all parties concerned.

* Spending limits are increased by the cost-of-living adjustment (COLA), which the Department of Labor calculates annually.

Deposit of Repayments

Section: 26 U.S.C. §9007(d)

Recommendation: Congress should revise the law to state that: All payments received by the Secretary of the Treasury under subsection (b) shall be deposited by him or her in the Presidential Election Campaign Fund established by section 9006(a).

Explanation: This change would allow the Fund to recapture monies repaid by convention-related committees of national major and minor parties, as well as by general election grant recipients. Currently the Fund recaptures only repayments made by primary matching fund recipients.

Contributions and Expenditures

Contributions and Expenditures to Influence Federal and Non-Federal Elections (1989)

Section: 2 U.S.C. §§441 and 434

Recommendation: Congress may wish to consider whether new legislation is needed to monitor political committees that engage in activities that influence both federal and nonfederal elections.

Explanation: The law requires that all funds spent to influence federal elections come from sources that are permissible under the limitations and prohibitions of the Act. Problems arise with the application of this provision when committees engage in activities that support both federal and nonfederal candidates. In this regard, the Commission has attempted to clarify the rules on allocating disbursements between federal and nonfederal election activity. (The Commission issued a Notice of Proposed Rulemaking and conducted hearings.)

The District Court for the District of Columbia, in *Common Cause v. FEC*, confirmed the Commission's long-standing view that allocation is the appropriate way to reconcile its mandate (to monitor excessive and prohibited funds) and the limits on its jurisdiction (to regulate money influencing federal

elections—but not state or local). In recent hearings, the Commission acknowledged that the allocation issue had been “clouded by allegations that the campaigns of both Presidential candidates raised large amounts of so-called ‘soft money.’”^{*} In light of this public concern, Congress may wish to reevaluate the Commission's role in regulating political committees that support both federal and nonfederal candidates.

Nonprofit Corporations (1989)

Section: 2 U.S.C. §441b

Recommendation: In light of the decision of the U.S. Supreme Court in *Federal Election Commission v. Massachusetts Citizens for Life, Inc. (MCFL)*, Congress may wish to amend the provision prohibiting corporate and labor spending in connection with federal elections in order to incorporate in the statute the text of the Court's decision.

Explanation: In the Court's decision of December 15, 1986, the Court held that the Act's prohibition on corporate political expenditures was unconstitutional as applied to independent expenditures made by a narrowly defined type of nonprofit corporation. Since that time, the Commission has published a notice of proposed rulemaking and has conducted hearings on whether regulatory changes are needed as a result of the Court's decision. Congress may wish to consider whether statutory changes are required as well.

The Court found that certain nonprofit corporations were not subject to the prohibitions of 2 U.S.C. §441b. The Court determined, however, that these nonprofit corporations had to disclose some aspect of their financial activity—in particular, inde-

^{*} Commissioner Thomas J. Josefiak, opening statement at FEC hearings on amendments to 11 CFR 106.1 concerning the allocation of disbursements between federal and nonfederal accounts, December 15, 1988.

Another approach would be to randomly select several Congressional districts and audit all political committees in those districts, for a given election cycle. This system might result in concentrating audits in fewer geographical areas.

Regardless of how random selections were made, it would be essential to include all types of political committees—PACs, party committees and candidate committees—and to ensure an impartial, even handed selection process.

Modifying “Reason to Believe” Finding

Section: 2 U.S.C. §437g

Recommendation: Congress should consider modifying the language pertaining to “reason to believe,” contained in 2 U.S.C. §437g, in order to reduce the confusion sometimes experienced by respondents, the press and the public. One possible approach would be to change the statutory language from “the Commission finds reason to believe a violation of the Act *has* occurred” to “the Commission finds reason to believe a violation of the Act *may have* occurred.” Or Congress may wish to use some other less invidious language.

Explanation: Under the present statute, the Commission is required to make a finding that there is “reason to believe a violation has occurred” before it may investigate. Only then may the Commission request specific information from a respondent to determine whether, in fact, a violation has occurred. The statutory phrase “reason to believe” is misleading and does a disservice to both the Commission and the respondent. It implies that the Commission has evaluated the evidence and concluded that the respondent has violated the Act. In fact, however, a “reason to believe” finding simply means that the Commission believes a violation may have occurred **if** the facts as described in the complaint are true. An investigation permits the Commission to evaluate the validity of the facts as alleged.

If the problem is, in part, one of semantics, it would be helpful to substitute words that sound less accusatory and that more accurately reflect what, in

fact, the Commission is doing at this early phase of enforcement.

In order to avoid perpetuating the erroneous conclusion that the Commission believes a respondent has violated the law every time it finds “reason to believe,” the statute should be amended.

Seeking Injunctions in Enforcement Cases

Section: 2 U.S.C. §437g(a)(1)

Recommendation: * Congress should amend the enforcement procedures set forth in the statute so as to empower the Commission to promptly initiate a civil suit for injunctive relief in order to preserve the status quo when there is clear and convincing

* Commissioner Elliott filed the following dissent: The Act presently enables the Commission to seek injunctive relief after the administrative process has been completed and this is more than sufficient. (See 2 U.S.C. §437g(a)(6)(A).)

I am unaware of any complaint filed with the Commission during the last three years which, in my opinion, would meet the four standards set forth in the legislative recommendation. Assuming a case was submitted which met these standards, I believe it would be inappropriate for the Commission to seek injunctive relief prior to a probable cause finding.

First, the very ability of the Commission to seek an injunction, especially during the “heat of the campaign,” opens the door to allegations of an arbitrary and politically motivated enforcement action by the Commission. The Commission’s decision to seek an injunction in one case while refusing to do so in another could easily be seen by candidates and respondents as politicizing the enforcement process.

Second, the Commission might easily be flooded with requests for injunctive relief for issues such as failure to file an October quarterly or a 12-day pre-general report. Although the Commission would have the discretion to deny all these requests for injunctive relief, in making that decision the Commission would bear the administrative burden of an immediate review of the factual issues.

Third, although the courts would be the final arbiter as to whether or not to grant an injunction, the mere decision by the Commission to proceed to seek an injunction during the final weeks of a campaign would cause a diversion of time and money and adverse publicity for a candidate during the most important period of the campaign.

For these reasons, I disagree with the recommendation to expand the power of the Commission to seek injunctive relief except as presently provided for in the Act.

evidence that a substantial violation of the Act is about to occur. Under criteria expressly stated, the Commission should be authorized to initiate such civil action in a United States district court without awaiting expiration of the 15 day period for responding to a complaint or the other administrative steps enumerated in the statute. The person against whom the Commission brought the action would enjoy the procedural protections afforded by the courts.

Explanation: On certain occasions in the heat of the campaign period, the Commission has been provided with information indicating that a violation of the Act is about to occur (or be repeated) and yet, because of the administrative steps set forth in the statute, has been unable to act swiftly and effectively in order to prevent the violation from occurring. In some instances the evidence of a violation has been clear-cut and the potential for an impact on a campaign or campaigns has been substantial. The Commission has felt constrained from seeking immediate judicial action by the requirements of the statute which mandate that a person be given 15 days to respond to a complaint, that a General Counsel's brief be issued, that there be an opportunity to respond to such brief, and that conciliation be attempted before court action may be initiated. The courts have indicated that the Commission has little if any discretion to deviate from the administrative procedures of the statute. *In re Carter-Mondale Reelection Committee, Inc.*, 642 F.2d 538 (D.C. Cir. 1980); *Common Cause v. Schmitt*, 512 F. Supp. 489 (D.D.C. 1980), *aff'd by an equally divided court* 455 U.S. 129 (1982); *Durkin for U.S. Senate v. FEC*, 2 Fed. Elec. Camp. Fin. Guide (CCH) para. 9147 (D.N.H. 1980). The Commission suggests that the standards that should govern whether it may seek prompt injunctive relief (which could be set forth in the statute itself) are:

1. There is a substantial likelihood that the facts set forth a potential violation of the Act;
2. Failure of the Commission to act expeditiously will result in irreparable harm to a party affected by the potential violation;

3. Expeditious action will not result in undue harm or prejudice to the interests of other persons; and
4. The public interest would be served by expeditious handling of the matter.

Disclaimers

Disclaimer Notices (1989)

Section: 2 U.S.C. §44ld

Recommendation: Congress should revise the statute to require registered political committees to display the appropriate disclaimer notice (when practicable) in any communication issued to the general public, regardless of its purpose or how it is distributed.

Explanation: Under 2 U.S.C. §44ld, a disclaimer notice is only required when "expenditures" are made for two types of communications made through "public political advertising": (1) communications that solicit contributions and (2) communications that "expressly advocate" the election or defeat of a clearly identified candidate. The Commission has encountered a number of problems with respect to this requirement.

First, the statutory language requiring the disclaimer notice refers specifically to "expenditures," suggesting that the requirement does not apply to disbursements that are exempt from the definition of "expenditure" such as "exempt activities" conducted by local and state party committees under, for example, 2 U.S.C. §431(9) (B) (viii). This proposal would make clear that all types of communications to the public would carry a disclaimer.

Second, the Commission has encountered difficulties in interpreting "public political advertising," particularly when volunteers have been involved with the preparation or distribution of the communication.

Third, the Commission has devoted considerable time to determining whether a given communication in fact contains "express advocacy" or "solicitation" language. The recommendation here would erase this need.

Most of these problems would be eliminated if the language of 2 U.S.C. §441d were simplified to require a registered committee to display a disclaimer notice whenever it communicated to the public, regardless of the purpose of the communication and the means of preparing and distributing it. The Commission would no longer have to examine the content of communications or the manner in which they were disseminated to determine whether a disclaimer was required.

This proposal is not intended to eliminate exemptions for communications appearing in places where it is inconvenient or impracticable to display a disclaimer.

Fundraising Projects Operated by Unauthorized Committees

Section: 2 U.S.C. §432(e)(4)

Recommendation: * Congress may wish to consider amending the statute, at 2 U.S.C. §432(e)(4), to clarify that a political committee that is not an authorized committee of any candidate may not use the name of a candidate in the name of any "project" or other fundraising activity of such committee.

Explanation: The statute now reads that a political committee that is not an authorized committee "shall not include the name of any candidate *in its name* [emphasis added]." In certain situations pre-

sented to the Commission the political committee in question has not included the name of any candidate in its official name as registered with the Commission, but has nonetheless carried out "projects" in support of a particular candidate using the name of the candidate in the letterhead and text of its materials. The likely result has been that recipients of communications from such political committees were led to believe that the committees were in fact authorized by the candidate whose name was used. The requirement that committees include a disclaimer regarding nonauthorization (2 U.S.C. §441d) has not proven adequate under these circumstances.

The Commission believes that the intent behind the current provision is circumvented by the foregoing practice. Accordingly, the statute should be revised to clarify that the use of the name of a candidate in the name of any "project" is also prohibited.

Fraudulent Solicitation of Funds

Section: 2 U.S.C. §441h

Recommendation: The current §441h prohibits fraudulent misrepresentation such as speaking, writing or acting on behalf of a candidate or committee on a matter which is damaging to such candidate or committee. It does not, however, prohibit persons from fraudulently soliciting contributions. A provision should be added to this section prohibiting persons

* Commissioner Elliott filed the following dissent: I support the policy underlying this legislative recommendation and recognize the seriousness of the problem necessitating such a recommendation. However, the scope of the recommendation is far too broad and inflexible given the traditional fundraising events, especially those held by political parties and some unauthorized political committees. Party committees are not authorized committees and therefore would come under the general prohibitions included in the recommendation, precluding the use of a candidate's name for any activity of a party committee. Oftentimes, however, fundraising events conducted by a party committee incorporate the name of a well-known Member of Congress as a fundraising tool. Typically, the fundraising contributions are made in the form of checks made payable to the name of the event, e.g., "Happy

Birthday, Senator Smith"; "Mike's Annual Barbecue"; "Sail With Senator Sanford"; "Roast Roberts." I do not believe Congress intends to preclude the use of the candidates' names in such activities, especially when the candidate is not only aware that his/her name is being used but approves and is actively participating in the event.

I would propose that the candidate be entitled to authorize the use of his or her name for such an event or activity provided the authorization is written. Again, I recognize the seriousness and the need to address this issue; however, Congress should not exclude fundraising tools which have been traditionally used by political committees.

Further, the impact of this recommendation has not been evaluated in the context of our joint fundraising regulations.

from fraudulently misrepresenting themselves as representatives of candidates or political parties for the purpose of soliciting contributions which are not forwarded to or used by or on behalf of the candidate or party.

Explanation: The Commission has received a number of complaints that substantial amounts of money were raised fraudulently by persons or committees purporting to act on behalf of candidates. Candidates have complained that contributions which people believed were going for the benefit of the candidate were diverted for other purposes. Both the candidates and the contributors were harmed by such diversion. The candidates received less money because people desirous of contributing believed they had already done so, and the contributors' funds had been misused in a manner in which they did not intend. The Commission has been unable to take any action on these matters because the statute gives it no authority in this area.

Public Disclosure

Commission as Sole Point of Entry for Disclosure Documents (revised 1989)

Section: 2 U.S.C. §432(g)

Recommendation: The Commission recommends that it be the sole point of entry for all disclosure documents filed by Federal candidates and political committees.

Explanation: A single point of entry for all disclosure documents filed by political committees would eliminate any confusion about where candidates and committees are to file their reports. It would assist committee treasurers by having one office where they would file reports, address correspondence and ask questions. At present, conflicts may arise when more than one office sends out materials, makes requests for additional information and answers questions relating to the interpretation of the law. A single point of entry would also reduce the

costs to the Federal government of maintaining three different offices, especially in the areas of personnel, equipment and data processing.

The Commission has authority to prepare and publish lists of nonfilers. It is extremely difficult to ascertain who has and who has not filed when reports may have been filed at or are in transit between two different offices. Separate points of entry also make it difficult for the Commission to track responses to compliance notices. Many responses and/or amendments may not be received by the Commission in a timely manner, even though they were sent on time by the candidate or committee. The delay in transmittal between two offices sometimes leads the Commission to believe that candidates and committees are not in compliance. A single point of entry would eliminate this confusion.

Finally, a single point of entry would enhance disclosure. Often the public and FEC staff have difficulty deciphering information from reports filed with the Clerk and the Secretary because these reports have been photocopied several times. A single point of entry would reduce the number of times a report had to be photocopied, thereby rendering it more legible and ensuring the placement of more accurate information on the public record.

If the Commission received all documents, it would transmit on a daily basis file copies to the Secretary of the Senate and the Clerk of the House, as appropriate. The Commission notes that the report of the Institute of Politics of the John F. Kennedy School of Government at Harvard University, *An Analysis of the Impact of the Federal Election Campaign Act, 1972-78*, prepared for the House Administration Committee, recommends that all reports be filed directly with the Commission (Committee Print, 96th Cong., 1st Sess., at 122 (1979)).

Public Disclosure at State Level

Section: 2 U.S.C. §439

Recommendation: Congress should consider relieving both political committees (other than candidate

committees) and State election offices of the burdens inherent in the current requirement that political committees file copies of their reports with the Secretaries of State. One way this could be accomplished is by providing a system whereby the Secretary of State (or equivalent State officer) would tie into the Federal Election Commission's computerized disclosure data base.

Explanation: At the present time, multicandidate political committees are required to file copies of their reports (or portions thereof) with the Secretary of State in each of the States in which they support a candidate. State election offices carry a burden for storing and maintaining files of these reports. At the same time, political committees are burdened with the responsibility of making multiple copies of their reports and mailing them to the Secretaries of State.

With advances in computer technology, it is now possible to facilitate disclosure at the State level without requiring duplicate filing. Instead, State election offices would tie into the FEC's computer data base. The local press and public could access reports of local political committees through a computer hookup housed in their State election offices. All parties would benefit: political committees would no longer have to file duplicate reports with State offices; State offices would no longer have to provide storage and maintain files; and the FEC could maximize the cost effectiveness of its existing data base and computer system.

Such a system has already been tested in a pilot program and proven inexpensive and effective. Initially, we would propose that candidate committees and in-State party committees continue to file their reports both in Washington, D.C., and in their home States, in response to the high local demand for this information. Later, perhaps with improvements in information technology, the computerized system could embrace these committees as well.

State Filing for Presidential Candidate Committees

Section: 2 U.S.C. §439

Recommendation: Congress should consider clarifying the State filing provisions for Presidential candidate committees to specify which particular parts of the reports filed by such committees with the FEC should also be filed with States in which the committees make expenditures. Consideration should be given to both the benefits and the costs of State disclosure.

Explanation: Both States and committees have inquired about the specific requirements for Presidential candidate committees when filing reports with the States. The statute requires that a copy of the FEC reports shall be filed with all States in which a Presidential candidate committee makes expenditures. The question has arisen as to whether the full report should be filed with the State, or only those portions that disclose financial transactions in the State where the report is filed.

The Commission has considered two alternative solutions. The first alternative is to have Presidential candidate committees file, with each State in which they have made expenditures, a copy of the entire report filed with the FEC. This alternative enables local citizens to examine complete reports filed by candidates campaigning in a State. It also avoids reporting dilemmas for candidates whose expenditures in one State might influence a primary election in another.

The second alternative is to require that reports filed with the States contain all Summary pages and only those Receipts and Disbursements schedules that show transactions pertaining to the State in which a report is filed. This alternative would reduce filing and storage burdens on Presidential candidate committees and States. It would also make State filing requirements for Presidential candidate committees similar to those for unauthorized

political committees. Under this approach, any person still interested in obtaining copies of a full report could do so by contacting the Public Disclosure Division of the FEC.

Registration and Reporting

Insolvency of Political Committees

Section: 2 U.S.C. §433(d)

Recommendation: The Commission requests that Congress clarify its intention as to whether the Commission has a role in the determination of insolvency and liquidation of insolvent political committees. 2 U.S.C. §433(d) was amended in 1980 to read: "Nothing in this subsection may be construed to eliminate or limit the authority of the Commission to establish procedures for—(A) the determination of insolvency with respect to any political committee; (B) the orderly liquidation of an insolvent political committee, and the orderly application of its assets for the reduction of outstanding debts; and (C) the termination of an insolvent political committee after such liquidation and application of assets." The phrasing of this provision ("Nothing...may be construed to...limit") suggests that the Commission has such authority in some other provision of the Act, but the Act contains no such provision. If Congress intended the Commission to have a role in determining the insolvency of political committees and the liquidation of their assets, Congress should clarify the nature and scope of this authority.

Explanation: Under 2 U.S.C. §433(d)(1), a political committee may terminate only when it certifies in writing that it will no longer receive any contributions or make any disbursements and that the committee has no outstanding debts or obligations. The Act's 1979 Amendments added a provision to the law (2 U.S.C. §433(d)(2)) possibly permitting the Commission to establish procedures for determining insolvency with respect to political committees, as well as the orderly liquidation and termination of insolvent committees. In 1980, the Commission promulgated the "administrative termination" regula-

tions at 11 CFR 102.4 after enactment of the 1979 Amendments, in response to 2 U.S.C. §433(d)(2). However, these procedures do not concern liquidation or application of assets of insolvent political committees.

Prior to 1980, the Commission adopted "Debt Settlement Procedures" under which the Commission reviews proposed debt settlements in order to determine whether the settlement will result in a potential violation of the Act. If it does not appear that such a violation will occur, the Commission permits the committee to cease reporting that debt once the settlement and payment are reported. The Commission believes this authority derives from 2 U.S.C. §434 and from its authority to correct and prevent violations of the Act, but it does not appear as a grant of authority beyond a review of the specific debt settlement request, to order application of committee assets.

It has been suggested that review by the Commission of the settlement of debts owed by political committees at less than face value may lead to the circumvention of the limitations on contributions specified by 2 U.S.C. §§441a and 441b. The amounts involved are frequently substantial, and the creditors are often corporate entities. Concern has also been expressed regarding the possibility that committees could incur further debts after settling some, or that a committee could pay off one creditor at less than the dollar value owed and subsequently raise additional funds to pay off a "friendly" creditor at full value.

When clarifying the nature and scope of the Commission's authority to determine the insolvency of political committees, Congress should consider the impact on the Commission's operations. An expanded role in this area might increase the Commission's workload, thus requiring additional staff and funds.

Waiver Authority

Section: 2 U.S.C. §434

Recommendation: Congress should give the Commission authority to grant general waivers or ex-

emptions from the reporting requirements of the Act for classifications and categories of political committees.

Explanation: In cases where reporting requirements are excessive or unnecessary, it would be helpful if the Commission had authority to suspend the reporting requirements of the Act. For example, the Commission has encountered several problems relating to the reporting requirements of authorized committees whose respective candidates were not on the election ballot. The Commission had to consider whether the election-year reporting requirements were fully applicable to candidate committees operating under one of the following circumstances:

- The candidate withdraws from nomination prior to having his or her name placed on the ballot.
- The candidate loses the primary and therefore is not on the general election ballot.
- The candidate is unchallenged and his or her name does not appear on the election ballot.

Moreover, a Presidential primary candidate who has triggered the \$100,000 threshold but who is no longer actively seeking nomination should be able to reduce reporting from a monthly to a quarterly schedule.

In some instances, the reporting problems reflect the unique features of certain State election procedures. A waiver authority would enable the Commission to respond flexibly and fairly in these situations.

In the 1979 Amendments to the Act, Congress repealed 2 U.S.C. §436, which had provided the Commission with a limited waiver authority. There remains, however, a need for a waiver authority. It would enable the Commission to reduce needlessly burdensome disclosure requirements.

Campaign-Cycle Reporting

Section: 2 U.S.C. §434

Recommendation: Congress should revise the law to require authorized candidate committees to report on a campaign-to-date basis, rather than a calendar year cycle, as is now required.

Explanation: Under the current law, a reporter or researcher must compile the total figures from several year-end reports in order to determine the true costs of a committee. In the case of Senate campaigns, which may extend over a six-year period, this change would be particularly helpful.

Monthly Reporting for Congressional Candidates

Section: 2 U.S.C. §434(a)(2)

Recommendation: The principal campaign committee of a Congressional candidate should have the **option** of filing monthly reports in lieu of quarterly reports.

Explanation: Political committees, other than principal campaign committees, may choose under the Act to file either monthly or quarterly reports during an election year. Committees choose the monthly option when they have a high volume of activity. Under those circumstances, accounting and reporting are easier on a monthly basis because fewer transactions have taken place during that time. Consequently, the committee's reports will be more accurate.

Principal campaign committees can also have a large volume of receipts and expenditures. This is particularly true with Senatorial campaigns. These committees should be able to choose a more frequent filing schedule so that their reporting covers less activity and is easier to do.

Monthly Reports (revised 1989)

Section: 2 U.S.C. §434(a)(3)(B) and (4)(B)

Recommendation: Congress should change the reporting deadline for monthly filers from the twentieth to the fifteenth of the month.

Explanation: Committees filing monthly reports are now required to file reports disclosing each month's activity by the twentieth day of the following month. Particularly in the fast-paced Presidential primary period, this 20-day lag does not meet the public's

need for timely disclosure. In light of the increased use of computerized recordkeeping by political committees, imposing a monthly filing deadline of the fifteenth of the month would not be unduly burdensome and would ensure timely disclosure of crucial financial data.

Reporting Payments to Persons Providing Goods and Services

Section: 2 U.S.C. §434(b)(5)(A), (6)(A) and (6)(B)

Recommendation: The current statute requires reporting “the name and address of each...person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure.” Congress should clarify whether this is meant, in all instances, to require reporting committees to disclose only the payments made by the committee or whether, in some instances, 1) the reporting committees must require initial payees to report, to the committees, their payments to secondary payees, and 2) the reporting committees, in turn, must maintain this information and disclose it to the public by amending their reports through memo entries.

Explanation: The Commission has encountered on several occasions the question of just how detailed a committee’s reporting of disbursements must be. See, e.g., Advisory Opinion 1983-25, 1 *Fed. Election Camp. Fin. Guide* (CCH), para. 5742 (Dec. 22, 1983) (Presidential candidate’s committee not required to disclose the names, addresses, dates or amounts of payments made by a general media consultant retained by the committee); Advisory Opinion 1984-8, 1 *Fed. Election Camp. Fin. Guide* (CCH), para. 5756 (Apr. 20, 1984) (House candidate’s committee only required to itemize payments made to the candidate for travel and subsistence, not the payments made by the candidate to the actual providers of services); *Financial Control and*

Compliance Manual for General Election Candidates Receiving Public Financing, Federal Election Commission, pp. IV 39-44 (1984) (Distinguishing committee advances or reimbursements to campaign staff for travel and subsistence from other advances or reimbursements to such staff and requiring itemization of payments made by campaign staff only as to the latter). Congressional intent in the area is not expressly stated, and the Commission believes that statutory clarification would be beneficial. In the area of Presidential public financing, where the Commission is responsible for monitoring whether candidate disbursements are for qualified campaign expenses (see 26 U.S.C. §§9004(c) and 9038(b)(2)), guidance would be particularly useful.

Verifying Multicandidate Committee Status

Section: 2 U.S.C. §§438(a)(6)(C), 441a(a)(2) and (a)(4)

Recommendation: Congress should consider modifying those provisions of the Act relating to multicandidate committees in order to reduce the problems encountered by contributor committees in reporting their multicandidate committee status, and by candidate committees and the Commission in verifying the multicandidate committee status of contributor committees. In this regard, Congress might consider requiring political committees to notify the Commission once they have satisfied the three criteria for becoming a multicandidate committee, namely, once a political committee has been registered for not less than 6 months, has received contributions from more than 50 persons and has contributed to at least 5 candidates for Federal office.

Explanation: Under the current statute, political committees may not contribute more than \$1,000 to each candidate, per election, until they qualify as a multicandidate committee, at which point they may contribute up to \$5,000 per candidate, per election. To qualify for this special status, a committee must meet three standards:

- Support 5 or more Federal candidates;
- Receive contributions from more than 50 contributors; and
- Have been registered as a political committee for at least 6 months.

The Commission is statutorily responsible for maintaining an index of committees that have qualified as multicandidate committees. The index enables recipient candidate committees to determine whether a given contributor has in fact qualified as a multicandidate committee and therefore is entitled to contribute up to the higher limit. The Commission's Multicandidate Index, however, is not current because it depends upon information filed periodically by political committees. Committees inform the Commission that they have qualified as multicandidate committees by checking the appropriate box on their regularly scheduled report. If, however, they qualify shortly after they have filed their report, several months may elapse before they disclose their new status on the next report. With semi-annual reporting in a nonelection year, for example, a committee may become a multicandidate committee in August, but the Commission's Index will not reveal this until after the January 31 report has been filed, coded and entered into the Commission's computer.

Because candidate committees cannot totally rely on the Commission's Multicandidate Index for current information, they sometimes ask the contributing committee directly whether the committee is a multicandidate committee. Contributing committees, however, are not always clear as to what it means to be a multicandidate committee. Some committees erroneously believe that they qualify as a multicandidate committee merely because they have contributed to more than one Federal candidate. They are not aware that they must have contributed to 5 or more Federal candidates and also have more than 50 contributors and have been registered for at least 6 months.

Miscellaneous

Draft Committees

Section: 2 U.S.C. §§431(8)(A)(i) and (9)(A)(i), 441a(a)(1) and 441b(b)

Recommendation: Congress should consider the following amendments to the Act in order to prevent a proliferation of "draft" committees and to reaffirm Congressional intent that draft committees are "political committees" subject to the Act's provisions.

1. *Bring Funds Raised and Spent for Undeclared but Clearly Identified Candidates Within the Act's Purview.* Section 431(8)(A)(i) should be amended to include in the definition of "contribution" funds contributed by persons "for the purpose of influencing a clearly identified **individual** to seek nomination for election or election to Federal office...." Section 431(9)(A)(i) should be similarly amended to include within the definition of "expenditure" funds expended by persons on behalf of such "a clearly identified **individual**."
2. *Restrict Corporate and Labor Organization Support for Undeclared but Clearly Identified Candidates.* Section 441b(b) should be revised to expressly state that corporations, labor organizations and national banks are prohibited from making contributions or expenditures "for the purpose of influencing a clearly identified **individual** to seek nomination for election or election..." to Federal office.
3. *Limit Contributions to Draft Committees.* The law should include explicit language stating that no person shall make contributions to **any** committee (including a draft committee) established to influence the nomination or election of a clearly identified **individual** for any Federal office which, in the aggregate, exceed that person's contribution limit, per candidate, per election.

Explanation: These proposed amendments were prompted by the decisions of the U.S. Court of Appeals for the District of Columbia Circuit in *FEC v. Machinists Non-Partisan Political League* and *FEC v. Citizens for Democratic Alternatives* in 1980 and the U.S. Court of Appeals for the Eleventh Circuit in *FEC v. Florida for Kennedy Committee*. The District of Columbia Circuit held that the Act, as amended in 1979, regulated only the **reporting requirements** of draft committees. The Commission sought review of this decision by the Supreme Court, but the Court declined to hear the case. Similarly, the Eleventh Circuit found that "committees organized to 'draft' a person for federal office" are not "political committees" within the Commission's investigative authority. The Commission believes that the appeals court rulings create a serious imbalance in the election law and the political process because a nonauthorized group organized to support someone who has not yet become a candidate may operate completely outside the strictures of the Federal Election Campaign Act. However, any group organized to support someone who has in fact become a candidate is subject to the Act's registration and reporting requirements and contribution limitations. Therefore, the potential exists for funneling large aggregations of money, both corporate and private, into the Federal electoral process through unlimited contributions made to nonauthorized draft committees that support a person who has not yet become a candidate. These recommendations seek to avert that possibility.

Honoraria

Section: 2 U.S.C. §§431(8)(B)(xiv) and 441i

Recommendation: The Commission offers two suggestions concerning honoraria.

1. Section 441i should be placed under the Ethics in Government Act.
2. As technical amendments, Sections 441i(c) and (d), which pertain to the annual limit on receiving honoraria (now repealed), should be repealed. Additionally, 2 U.S.C. §431(8)(B)(xiv), which re-

fers to the definition of honorarium in Section 441i, should be modified to contain the definition itself.

Explanation: Congress eliminated the \$25,000 annual limit on the amount of honoraria that could be accepted, but it did not take out these two sections, which only apply to the \$25,000 limit. This clarification would eliminate confusion for officeholders and thereby help the Commission in its administration of the Act.

Budget Reimbursement Fund (revised 1989)

Section: 2 U.S.C. §438

Recommendation: The Commission recommends that Congress establish a reimbursement account for the Commission so that expenses incurred in preparing copies of documents, publications and computer tapes sold to the public are recovered by the Commission. Similarly, costs awarded to the Commission in litigation (e.g., printing, but not civil penalties) and payments for Commission expenses incurred in responding to Freedom of Information Act requests should be payable to the reimbursement fund. The Commission should be able to use such reimbursements to cover its costs for these services, without fiscal year limitation, and without a reduction in the Commission's appropriation.

Explanation: At the present time, copies of reports, microfilm, and computer tapes are sold to the public at the Commission's cost. However, instead of the funds being used to reimburse the Commission for its expenses in producing the materials, they are credited to the U.S. Treasury. The effect on the Commission of selling materials is thus the same as if the materials had been given away. The Commission absorbs the entire cost. In FY 1988, in return for services and materials it offered the public, the FEC collected and transferred \$123,790 in miscellaneous receipts to the Treasury. During the first three months of FY 1989, \$25,490 was transferred to the Treasury. Establishment of a reim-

bursement fund, into which fees for such materials would be paid, would permit this money to be applied to further dissemination of information. Note, however, that a reimbursement fund would not be applied to the distribution of FEC informational materials to candidates and registered political committees. They would continue to receive free publications that help them comply with the Federal election laws.

There should be no restriction on the use of reimbursed funds in a particular year to avoid the possibility of having funds lapse.

Appendix 1

Biographies of Commissioners and Officers

Commissioners

Thomas J. Josefiak, Chairman

April 30, 1991*

Until his appointment as Commissioner in August 1985, Mr. Josefiak served with the Commission as Special Deputy to the Secretary of the Senate. Before assuming that post in 1981, he was legal counsel to the National Republican Congressional Committee. His past experience also includes positions held at the U.S. House of Representatives. He was minority special counsel for Federal election law to the Committee on House Administration and, before that, served as legislative assistant to Congressman Silvio O. Conte. A native of Massachusetts, Commissioner Josefiak holds a B.A. degree from Fairfield University, Connecticut, and a J.D. degree from Georgetown University Law Center. He was elected 1987 Vice Chairman.

Danny L. McDonald, Vice Chairman

April 30, 1993

Mr. McDonald, as general administrator of the Oklahoma Corporation Commission, was responsible for the management of 10 regulatory divisions from 1979 until his appointment to the Commission in December 1981. He was secretary of the Tulsa County Election Board from 1974 to 1979 and served as chief clerk of the board in 1973. He also served as a member of the Advisory Panel to the FEC's National Clearinghouse on Election Administration. Mr. McDonald, a native of Sand Springs, Oklahoma, holds a B.A. from Oklahoma State University and attended the John F. Kennedy School of Government at Harvard University. He served as Commission Chairman during 1983.

Joan D. Aikens

April 30, 1989

Mrs. Aikens was one of the original members of the Federal Election Commission appointed in 1975. Following the *Buckley v. Valeo* decision of the Supreme Court and the subsequent reconstitution

of the FEC, President Ford reappointed her to a five-year term. In 1981, Mrs. Aikens continued to serve until President Reagan named her to complete an unexpired term due to a resignation. In 1983, President Reagan again reappointed Mrs. Aikens, this time for a six-year term. She served as Chairman between May 1978 and May 1979 and during 1986.

Prior to her appointment to the Commission, Mrs. Aikens was an executive for a Pennsylvania public relations firm. From 1972 to 1974, she was president of the Pennsylvania Council of Republican Women and served on the board of the National Federation of Republican Women. A native of Delaware County, Pennsylvania, Mrs. Aikens has been active in a variety of volunteer organizations and is currently a member of the Commonwealth Board of the Medical College of Pennsylvania. She is also a member of the board of directors of Ursinus College, Collegeville, Pennsylvania, where she received her B.A. and an honorary Doctor of Laws degree.

Lee Ann Elliott

April 30, 1993

Before her appointment to the Commission in December 1981, Mrs. Elliott served as vice president of the Washington firm Bishop, Bryant & Associates, Inc. From 1970 to 1979, she was associate executive director of the American Medical Political Action Committee, having served as assistant director from 1961 to 1970. Mrs. Elliott was on the board of directors of the American Association of Political Consultants and of the Chicago Area Public Affairs Group, of which she is a past president. She was also a member of the Public Affairs Committee of the Chamber of Commerce of the United States. In 1979, she received the Award for Excellence in Serving Corporate Public Affairs from the National Association of Manufacturers. Mrs. Elliott, a native of St. Louis, Missouri, holds a B.A. from the University of Illinois. She also completed the Medical Association Management Executives Program at Northwestern University and is a Certified Association Executive. Mrs. Elliott served as Commission Chairman during 1984.

* Term expiration date.

Appendix 2

Chronology of Events, 1988

January

- 1 — Chairman Thomas J. Josefiak and Vice Chairman Danny L. McDonald begin one-year terms as Commission officers.- FEC releases videotape for Congressional candidates.
- 5 — Jesse Jackson certified to receive primary matching funds.
- 8 — In *Ralph J. Galliano v. U.S. Postal Service*, U.S. Court of Appeals holds that the FEC is the exclusive arbiter concerning the name identifications and disclaimers in solicitations for political contributions.
- 18 — Commission releases statistics on number of PACs.
- 28 — Lenora B. Fulani certified to receive matching funds.
- 31 — 1987 year-end report due.

February

- 8 — In *Congressman Stark v. FEC*, U.S. District Court upholds FEC's dismissal of an administrative complaint.
- 11 — FEC determines that checks to "The Kemp Forum" are not matchable.
 - Commission releases financial figures on eighteen Presidential primary candidates.
- 19 — Commission cosponsors election law conference in Louisville, Kentucky.
- 23 — Commission publishes notice of inquiry on allocation of spending between federal and nonfederal accounts.

March

- 1 — Commission releases figures on 1988 Presidential spending limits.
 - Commission publishes *Record Supplement on Contributions*.
- 2 — Commission certifies an additional \$328,000 to each major party for their Presidential nominating conventions.

- 3 — Commission testifies before Senate Appropriations Subcommittee on Treasury, Postal Service and General Government on Agency's FY 1989 budget.
 - Commission testifies before House Appropriations Subcommittee on Treasury, Postal Service and General Government on agency's FY 1989 budget.
- 8 — Commission testifies before Subcommittee on Elections of the House Administration on agency's FY 1989 budget.
 - Louisiana special primary election (fourth Congressional district).
- 10 — In *Xerox v. Americans with Hart and Kroll v. Americans with Hart*, U.S. District Court vacates creditor's claims against 1984 Hart campaign.
- 24 — Lyndon H. LaRouche certified to receive primary matching funds.
 - In *Antosh v. FEC*, U.S. District Court rules that three labor PACs are not affiliated.
 - Commission testifies before Senate Rules Committee on agency's FY 1989 budget.
- 25 — Commission cosponsors election law conference in Columbus, Ohio.
- 31 — Commission releases study on 1985-86 independent spending.

April

- 6 — FEC transmits 1988 legislative recommendations to Congress and President.
- 12 — In *USDC v. FEC*, U.S. District Court rules that USDC was not exempt from §441b's prohibition against corporate expenditures.
- 15 — First quarter report due.

May

- 12-13 — FEC cosponsors election law conference in Seattle, Washington.
- 12 — Commission adopts new procedures to speed up enforcement.

June

- 1 — Commission publishes *Annual Report 1987*.
- 7 — New Jersey special primary election (third Congressional district).
- 14 — Virginia special election (fifth Congressional district).
- 22 — Commission releases PAC study for first 15 months of 1987-88 cycle.
- 24 — Commission issues press release on party financial activity.
- 27 — President Reagan signs law eliminating the Supreme Court's mandatory jurisdiction under 2 U.S.C. §437h(b).

July

- 1 — Commission publishes revised *Campaign Guide for Congressional Candidates and Committees*.
- 12 — Illinois special primary election (21st Congressional district).
- 15 — Second quarter report due.
- 22 — In *FEC v. Ted Haley Congressional Committee*, U.S. Court of Appeals upholds FEC's interpretation that loan guarantees made after election to retire campaign debt are contributions.
- 26 — FEC approves payment of \$46.1 million to Democratic Presidential nominee Michael Dukakis.
- FEC dismisses petition to deny public funds for the general election to the Democratic Presidential ticket.

August

- 1 — Commission releases video tape for State party committees.
- 3 — In *Boulter and National Senatorial Committee v. FEC*, U.S. Court of Appeals affirms FEC's decision to certify general election public funds to Democratic presidential ticket.
- 5 — In *NRA v. FEC*, U.S. Court of Appeals affirms lower court ruling that FEC's determination on administrative complaints cannot be appealed after 60 days.
- 11 — FEC releases study on activity of 1987-88 Congressional campaigns.
- 22 — FEC approves payment of \$46.1 million to Republican Presidential nominee Vice President George Bush.
- 25 — Tennessee special primary election (second Congressional district).
- In *Common Cause v. FEC*, U.S. District Court rejects imposition of timetable on Commission's revision of allocation regulations but asks the FEC to submit progress reports periodically.

September

- 8 — Commission testifies before House Administration Committee on HR. 5121 which would require publication of all multicandidate political committee reports.
- Commission publishes a notice in the *Federal Register* regarding rulemaking on travel, disclaimers and trade association solicitations.
- 22 — FEC approves notice of proposed rulemaking on allocation of spending between federal and nonfederal accounts.

October

- 15 — Third quarter report due.
- 27 — Pre-general election report due.

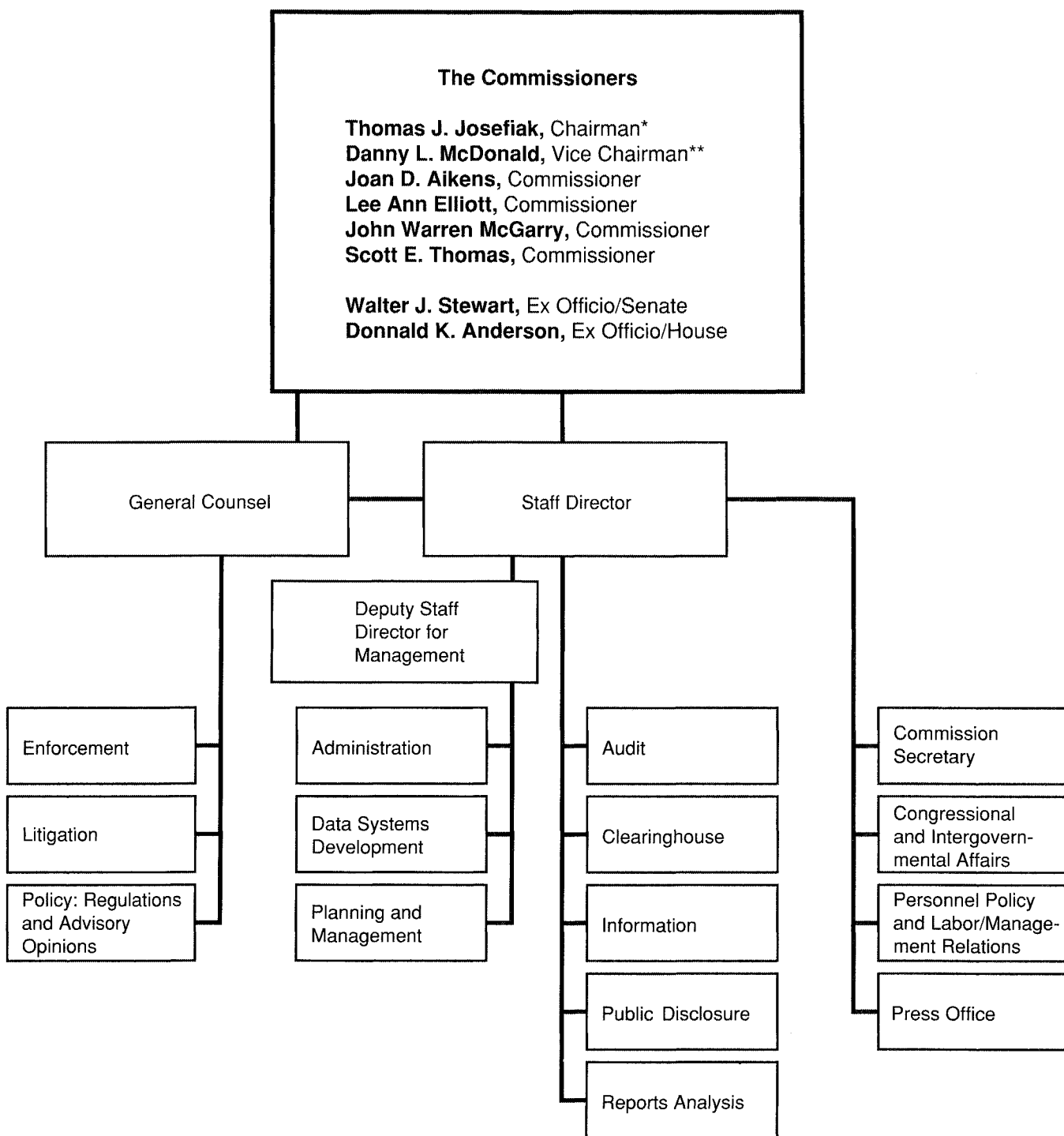
November

- 1 — Commission releases brochure on Direct Access Program describing private electronic ties with FEC's data base.
- 3 — FEC issues press release on 1987-88 national party activity.
- 4 — FEC releases pre-general election data on 1987-88 Congressional campaign activity.
- 8 — General Election Day.
- 16 — FEC holds public hearings on proposed rules to regulate independent expenditures made by nonprofit corporations.

December

- 6 — FEC publishes notice of proposed rulemaking regarding debts owed by candidates and political committees.
- 8 — Post-general election report due.
- 15 — FEC elects Danny L. McDonald as Chairman and Lee Ann Elliott as Vice Chairman for 1989.
- 16 — FEC holds hearing on allocation regulations.

Appendix 3 FEC Organization Chart



* Commissioner McDonald was elected 1989 Chairman.

** Commissioner Elliott was elected 1989 Vice Chairman.

Appendix 4

FEC Offices

This appendix briefly describes the offices that make up the Commission. They are listed in alphabetical order. Local telephone numbers are given for offices that have extensive contact with the public. Commission offices can also be reached on the toll-free number, 800/424-9530 and locally 202/376-5140

Administration

The Administration Division is the Commission's "housekeeping" unit and is responsible for accounting, procurement and contracting, space management, payroll, travel and supplies. In addition, several support functions are centralized in the office, such as word processing, printing, document reproduction and mail services. The division also handles records management, inventory control and building security and maintenance.

Audit

Many of the Audit Division's responsibilities concern the public funding program. The division evaluates the matching fund submissions of Presidential primary candidates and determines the amount of contributions that may be matched with Federal funds. The division conducts the statutorily mandated audits of all publicly funded candidates and committees.

In addition, the division audits those committees which, according to FEC determinations, have not met the threshold requirements for substantial compliance with the law. Audit Division resources are also used in the Commission's investigations of complaints. Finally, the division conducts internal audits of Commission activities.

Clearinghouse

The National Clearinghouse on Election Administration, located on the seventh floor, assists State and local election officials by responding to inquiries, publishing research and conducting workshops on all matters related to Federal election administration. Additionally, the Clearinghouse answers questions from the public on the electoral process. Local phone: 376-5670.

Commission Secretary

The Secretary to the Commission handles all administrative matters relating to Commission meetings, including agendas, documents, Sunshine Act notices, minutes and certification of Commission votes. The office also circulates and tracks numerous materials not related to meetings, and records the Commissioners' tally votes on these matters.

Commissioners

The six Commissioners — three Democrats and three Republicans — are appointed by the President and confirmed by the Senate. Two ex officio Commissioners, the Secretary of the Senate and the Clerk of the House of Representatives, are non-voting members. They appoint special deputies to represent them at the Commission.

The six voting Commissioners serve full time and are responsible for administering and enforcing the Federal Election Campaign Act. They generally meet twice a week, once in closed session to discuss matters that, by law, must remain confidential, and once in a meeting open to the public. At these meetings, they formulate policy and vote on significant legal and administrative matters.

Congressional, Legislative and Intergovernmental Affairs

This office serves as primary liaison with Congress and Executive Branch agencies. The office is responsible for keeping Members of Congress informed about Commission decisions and, in turn, for informing the agency on legislative developments.

Data Systems Development

This division provides computer support for the entire Commission. Its responsibilities are divided into two general areas.

In the area of campaign finance disclosure, the Data Systems Development Division (DSDD) enters into the computer data base information from all reports filed by political committees and other entities. DSDD is also responsible for the computer

programs that sort and organize campaign finance data into indexes. The indexes permit a detailed analysis of campaign finance activity and, additionally, provide a tool for monitoring contribution limitations. DSDD publishes the *Reports on Financial Activity* series of periodic studies on campaign finance and generates statistics for other publications.

The division also provides computer support for the agency's administrative functions. These include management information and document tracking systems, along with personnel and payroll support.

General Counsel

The General Counsel directs the agency's enforcement activities and represents and advises the Commission in any legal actions brought against it. The Office of General Counsel handles all civil litigation, including several cases which have come before the Supreme Court. The office also drafts, for Commission consideration, regulations and advisory opinions, as well as other legal memoranda interpreting the Federal Election Campaign Act.

Information Services

In an effort to promote voluntary compliance with the law, the Information Services Division provides technical assistance to candidates and committees and others involved in elections. Staff research and answer questions on the Federal Election Campaign Act and FEC regulations, procedures and advisory opinions; direct workshops on the law; and publish a wide range of materials. Located on the second floor, the division is open to the public. Local phone: 376-3120.

Law Library

The Commission law library, part of the Office of General Counsel, is located on the eighth floor and is open to the public. The collection includes basic legal research tools and materials dealing with political campaign finance, corporate and labor political activity and campaign finance reform. The Library staff prepares indices to Advisory Opinions

and Matters Under Review (MURs) as well as a *Campaign Finance and Federal Election Law Bibliography*, all available for purchase from the Public Records Office. Local phone: 376-5312.

Personnel and Labor/Management Relations

This office handles employment, position classification, training and employee benefits. It also provides policy guidance on awards and discipline matters and administers a comprehensive labor relations program including contract negotiations and resolution of disputes before third parties.

Planning and Management

This office develops the Commission's budget and, each fiscal year, prepares a management plan determining the allocation and use of resources throughout the agency. Planning and Management monitors adherence to the plan, providing monthly reports measuring the progress of each division in achieving the plan's objectives.

Press Office

Staff of the Press Office are the Commission's official media spokespersons. In addition to publicizing Commission actions and releasing statistics on campaign finance, they respond to all questions from representatives of the print and broadcast media. Located on the first floor, the office also handles requests under the Freedom of Information Act. Local phone: 376-3155.

Public Records

Staff from the Public Records Office answer questions and provide information on the campaign finance activities of political committees and candidates involved in Federal elections. Located on the first floor, the office is a library facility with ample work space and a knowledgeable staff to help locate documents. The FEC encourages the public to review the many documents available, including committee reports, computer indexes, closed compliance cases and advisory opinions. Local phone: 376-3140.

Reports Analysis

Reports analysts assist committee officials in complying with reporting requirements and conduct detailed examinations of the campaign finance reports filed by political committees. If an error, omission or prohibited activity (e.g., an excessive contribution) is discovered in the course of reviewing a report, the analyst sends the committee a letter that explains the mistake and asks for clarification. By sending these letters, the Commission seeks to ensure full disclosure and to encourage the committee's voluntary compliance with the law. Analysts also provide frequent telephone assistance to committee officials and encourage them to call the division with reporting questions or compliance problems. Local number: 376-2480.

Staff Director and Deputy Staff Director

The Staff Director carries the responsibilities of appointing staff, with the approval of the Commission, and implementing Commission policy. The Staff Director oversees the Commission's public disclosure activities, outreach efforts, review of reports and the audit program, as well as the administration of the agency.

The Deputy Staff Director has broad responsibility for assisting in this supervision, particularly in the areas of budget, administration and computer systems.

Appendix 5

Statistics on Commission Operations

Summary of Disclosure Files

| | Total Filers Existing in 1988 | Filers Terminated as of 12/31/88 | Continuing Filers as of 12/31/88 | Number of Reports and Statements in 1988 | Gross Receipts in 1988 | Gross Expenditures in 1988 |
|--|-------------------------------|----------------------------------|----------------------------------|--|------------------------|----------------------------|
| Presidential | 731 | 82 | 649 | 2,314 | \$266,832,210 | \$269,008,934 |
| Candidates | 398 | 41 | 357 | | | |
| Committees | 333 | 41 | 292 | | | |
| Senate | 1094 | 154 | 940 | 1,400 | \$163,708,129 | \$195,551,083 |
| Candidates | 555 | 77 | 478 | | | |
| Committees | 539 | 77 | 462 | | | |
| House | 5,318 | 832 | 4,486 | 7,289 | \$216,983,470 | \$219,771,572 |
| Candidates | 2,766 | 416 | 2,350 | | | |
| Committees | 2,552 | 416 | 2,136 | | | |
| Party | 538 | 86 | 452 | 3,972 | \$400,800,240 | \$412,302,695 |
| Delegates | 102 | 14 | NA | 108 | 0 | \$119,478 |
| Nonparty | 4,827 | 617 | 4,210 | 46,132 | \$218,840,474 | \$241,903,563 |
| Labor committees | 401 | 51 | 350 | | | |
| Corporate committees | 2008 | 206 | 1,802 | | | |
| Membership, trade and other committees | 2418 | 360 | 2,058 | | | |
| Communication cost filers | 173 | NA | NA | 167 | NA | \$4,336,897 |
| Independent expenditures by persons other than political committees | 163 | NA | NA | 299 | NA | \$358,863 |

Divisional Statistics for Calendar Year 1988

| | Total |
|--|-----------|
| Reports Analysis Division | |
| Documents processed | 58,898 |
| Reports reviewed | 35,740 |
| Telephone assistance and meetings | 7,438 |
| Requests for additional information (RFAs) | 5,104 |
| Second RFAs | 2,074 |
| Names of candidate committees published for failure to file reports | 77 |
| Compliance matters referred to the Office of General Counsel or Audit Division | 125 |
| Data Systems Development Division | |
| Documents receiving Pass 1 coding* | 44,616 |
| Documents receiving Pass III coding* | 51,064 |
| Documents receiving Pass 1 entry | 54,966 |
| Documents receiving Pass III entry | 50,508 |
| Transactions receiving Pass III entry | |
| • In-house | 161,855 |
| • Contract | 598,664 |
| Public Records Office | |
| Campaign finance material processed (total pages) | 1,637,609 |
| Requests for campaign finance reports | 7,907 |
| Visitors | 14,183 |
| Total people served | 22,090 |
| Information phone calls | 19,584 |
| Computer printouts provided | 114,692 |
| Total income (transmitted to U.S. Treasury) | \$115,042 |
| Cumulative total pages of documents available for review | 8,118,214 |
| Contacts with state election offices | 3,863 |
| Notices of failure to file with state election offices | 209 |

| | Total |
|--|----------|
| Information Services Division | |
| Telephone inquiries | 72,965 |
| Information letters | 184 |
| Distribution of FEC materials | 10,826 |
| Prior notices (sent to inform filers of reporting deadlines) | 41,213 |
| Other mailings | 21,748 |
| Visitors | 155 |
| Public appearances by Commissioners and staff | 141 |
| State workshops | 3 |
| Publications | 22 |
| Video | 1 |
| Press Office | |
| Press releases | 181 |
| Telephone inquiries from press | 19,794 |
| Visitors to press office | 3,407 |
| Freedom of Information Act (FOIA) requests | 112 |
| Fees for materials requested under FOIA (transmitted to U.S. Treasury) | \$15,527 |
| Clearinghouse on Election Administration | |
| Telephone inquiries | 4,124 |
| Information letters | 42 |
| Visitors | 79 |
| State workshops | 0 |
| Publications | 8 |
| Project conferences | 0 |

* Computer coding and entry of campaign finance information occur in two phases. In the first phase, Pass 1, summary information is coded and entered into the computer within 48 hours of the Commission's receipt of the report. During the second phase, Pass III, itemized information is coded and entered.

| | Total |
|---------------------------------------|-------|
| Office of General Counsel | |
| Advisory opinions | |
| Requests pending at beginning of 1988 | 7 |
| Requests received | 49 |
| Issued, closed or withdrawn* | 56 |
| Pending at end of year | 0 |
| Compliance cases (MURs) | 8 |
| Cases pending at beginning of 1988 | 171 |
| Cases opened | 236 |
| Cases closed | 187 |
| Cases pending at end of year | 220 |
| Litigation | |
| Cases pending at beginning of 1988 | 46 |
| Cases opened | 27 |
| Cases closed | 31 |
| Cases pending at end of year | 42 |
| Cases won | 27 |
| Cases lost | 1 |
| Cases voluntarily dismissed | 3 |
| Cases dismissed as moot | 0 |
| Law Library | |
| Telephone inquiries | 1987 |
| Visitors served | 908 |

* Forty-five opinions were issued; eleven opinion requests were withdrawn or closed without issuance of an opinion.

Audits Completed by Audit Division 1975-1988

| | |
|----------------------------------|------------|
| Presidential | 57 |
| Presidential joint fundraising** | 8 |
| Senate | 12 |
| House | 118 |
| Party (national) | 42 |
| Party (other) | 109 |
| Nonparty (PACs) | 70 |
| Total | 416 |

** Presidential joint fundraising committees are those established by two or more political committees, including at least one Presidential committee, for the purpose of raising funds jointly.

Appendix 6

FEC Federal Register Notices, 1988

| Notice* | Title | Federal Register Publication Date | Citation |
|---------|---|-----------------------------------|---------------------------|
| 1988-1 | 11 CFR Parts 109 and 114: Corporate and Labor Expenditures; Advance Notice of Proposed Rulemaking | 1/7/88 | 53 <i>Fed. Reg.</i> 416 |
| 1988-2 | Filing Dates for Louisiana Special Elections | 1/20/88 | 53 <i>Fed. Reg.</i> 1510 |
| 1988-3 | 11 CFR Part 110; Rulemaking Petition; Ted Haley Congressional Committee | 1/28/88 | 53 <i>Fed. Reg.</i> 2500 |
| 1988-4 | 11 CFR Parts 102 and 106 Allocation Between Federal and Nonfederal Accounts; Notice of Inquiry | 2/23/88 | 53 <i>Fed. Reg.</i> 5277 |
| 1988-5 | Filing Dates for Virginia Special Elections | 3/7/88 | 53 <i>Fed. Reg.</i> 7235 |
| 1988-6 | Filing Dates for New Jersey Special Election | 4/13/88 | 53 <i>Fed. Reg.</i> 12188 |
| 1988-7 | Filing Dates for Illinois Special Elections | 5/11/88 | 53 <i>Fed. Reg.</i> 16781 |
| 1988-8 | Filing Dates for Tennessee Special Elections | 7/13/88 | 53 <i>Fed. Reg.</i> 26500 |
| 1988-9 | Ted Haley Congressional Committee Rulemaking Petition; Notice of Disposition | 9/15/88 | 53 <i>Fed. Reg.</i> 35829 |

| Notice | Title | Federal Register Publication Date | Citation |
|---------|--|-----------------------------------|---------------------------|
| 1988-10 | Contributions and Expenditures; Communications, Advertising; Trade Associations; Notice of Proposed Rulemaking | 9/15/88 | 53 <i>Fed. Reg.</i> 35827 |
| 1988-11 | 11 CFR Part 106: Methods of Allocation Between Federal and Nonfederal Accounts; Payments; Reporting; Notice of Proposed Rulemaking | 9/29/88 | 53 <i>Fed. Reg.</i> 38012 |
| 1988-12 | 11 CFR Parts 109 and 114: Corporate and Labor Expenditures; Announcement of Public Hearing and Comment Period Extension | 10/13/88 | 53 <i>Fed. Reg.</i> 40070 |
| 1988-13 | 11 CFR Part 106: Methods of Allocation between Federal and Nonfederal Accounts; Payments; Reporting; Change of Public Hearing Date | 10/13/88 | 53 <i>Fed. Reg.</i> 40070 |
| 1988-14 | 11 CFR Parts 113, 114 and 116; Debts Owed by Candidates and Political Committees; Notice of Proposed Rulemaking | 12/6/88 | 53 <i>Fed. Reg.</i> 49193 |

* This appendix does not include *Federal Register* notices of Commission meetings published under the Government in the Sunshine Act.